

In one sense no reported case can ever be obsolete while the laws and judicial usages of English-speaking countries are what they are: that is, no man can say beforehand that any given case, however antiquated or trifling it may appear in itself to be, may not at some time have its use for the modern practitioner or text-writer. Every decision in the books is part of the history of the law, and no part of that history can be absolutely insignificant.—(Sir Frederick Pollock, Bart., LL.D., Corpus Professor of Jurisprudence in the University of Oxford.)

Accurate knowledge of the present state of the law upon any subject involves necessarily the history of the development of the law upon that subject, which can only be attained by following down the decisions touching upon it. — (Francis M. Scott, Justice, Supreme Court, New York.)

The law is the last interpretation of the law given by the last Judge.

The enunciation of the most elementary principle of law is frequently met by a demand for "an authority in support of that proposition . . . ." No time spent upon providing oneself with a precedent is ever wasted even though the book may have to be judiciously hidden from view until required.—(The Hon'ble Sir Cecil Walsh, Kt., K.C., Ex-Offg., Chief Justice, Allahabad High Court.)

The last Judicial Interpretation of the law is the Law on which your case hangs

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**A. I. R. Commentaries**

**THE  
INDIAN STAMP ACT  
(II of 1899)**

WITH EXHAUSTIVE, EXPLANATORY AND CRITICAL COMMENTARIES

BY

V. V. CHITALEY, B.A., LL.B., *Senior Advocate, Supreme Court*

AND

S. APPU RAO, B.A., B.L., *Advocate, High Court of Madras.*

( *Authors of the Commentaries on the Court-fees and Suits Valuation Acts.* )

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**2nd (1951) Edition**

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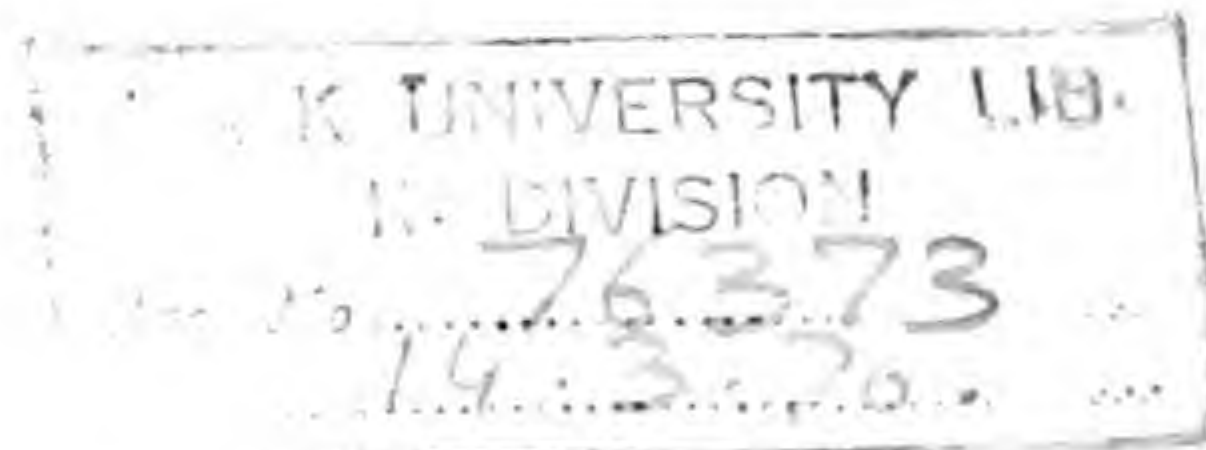


Statute law herein stated is as on 31st October, 1950;  
and the case law, as on 1st December, 1950.

FIRST EDITION, 1945.

SECOND EDITION, 1951.

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## PREFACE TO THE SECOND EDITION

In bringing out the second edition of this book, the Authors wish to express their thanks to the profession for its appreciation of the first edition and the reception given to it.

As stated in the Preface to the first edition, the aim of the book is to be a complete and self-contained treatise, for the whole of what was previously British India, on the law relating to general stamps. Hence, it includes not only the main Act but also all the amendments in force in the several States, together with all Rules, Notifications, etc., relating to the subject. Since the publication of the last edition, numerous changes in stamp duty have been made by the different State Governments. In this edition, changes made up to the end of October 1950 have been incorporated.

It is not necessary to be apologetic about the length or size of the book. But the following passage which occurs in the course of a review (of the first edition of the book and of the A. I. R. Commentary on the Registration Act) in the Law Quarterly Review (January 1950) may be quoted here :

"The commentaries on the Indian Registration Act and the Indian Stamp Act are first editions and their length is, to a considerable extent, due to their convenient and necessary appendices. They follow the same scheme as that employed in the Commentary on the Code of Criminal Procedure. They do not deal with statutes of which student's editions are likely to be necessary. *If a point arising from either is not clear from the Act itself, it is unlikely that a reference to a less fully annotated commentary will be fruitful.* These two works should prove helpful, not only to bench and bar, but also to Registration Officers and Taxing Masters."

As in the case of the Court-fees Act it would be a mistake to think that Stamp law is a mere matter of rules, tables and arithmetical calculations. The subject affords ample scope for the application of legal principles. For instance, the question under what category an instrument falls for the purpose of stamp duty often gives rise to interesting questions of law. To give only one example, reference may be made to the discussion as to the meaning of a "Promissory Note" under S. 2 (22). Similar instances will be found throughout this book.

The Authors wish to thank Messrs. V. S. Balkundi, B. A., LL. B., V. B. Bakhale, M. A., LL. B., D. H. Zadgaonkar, B. A., LL. B., K. S. Bakre, B. Sc., LL. B., D. R. Rajandekar, B. A., LL. B., R. G. Dhobley, B. A., LL. B., G. M. Jatar, B. A. LL. B. and D. W. Chitaley, B. A., LL. B., for their help in the preparation of this edition.

2nd January, 1951.

V. V. C.  
S. A. R.



## PREFACE TO THE FIRST EDITION

STAMP LEGISLATION in British India is nearly a century and a half old. Ever since the Bengal Regulation, VI of 1797, there have been laws in British India imposing stamp duties on documents. In England, stamp laws are of a much older origin. It may be remembered that one of the causes of the American War of Independence was the imposition of stamp duties on the American colonies. Thus, the imposition of stamp duties on documents is a time-honoured mode of raising revenue for the state. A stamp law has an incidental advantage of enabling forgeries to be detected in some cases through the examination of the marks on stamp papers. (See Preamble Note 20.)

As the stamp law is one under which duty is imposed upon people whenever they execute certain documents, it affects people in general more than the Court-fees Act which affects them only when they have any business in Courts or public offices. Hence, the Stamp Act has a much wider practical interest for the people of a country than the Court-fees Act. This book is intended to be a complete and self-contained treatise, for the whole of British India, on the law relating to general stamps. The book contains not only the provisions of the main Act with all amendments up to the date of the publication but also all Provincial amendments of the different Provinces. The Stamp Rules and Notifications in force in the different Provinces regarding the kinds of stamps to be used, reductions and remissions of stamp duty, refunds and renewals of stamps and other matters have all been given as fully as possible. The previous Stamp Acts of India and the English Stamp Act of 1891 have been given *in extenso*, besides a comparative table showing the corresponding provisions of the present Act and the previous Acts.

The Commentaries have been prepared on the same system as the previous A. I. R. Commentaries. The whole of the relevant case-law, both Indian and English, has been pressed into service and even the Rulings of Boards of Revenue have been drawn upon and incorporated in their proper places. The English law has been referred to and the points of difference between the English and Indian laws have been pointed out wherever necessary. The Authors have tried to consider all questions from an independent point of view and to express what has appeared to them to be the correct legal position on the several questions arising in the course of their treatment of the subject.

The Authors wish to invite the special attention of the profession to the fact that the discussion in the book is profusely illustrated with reference to actual documents and that the main features of the documents forming the subject-matter of the various rulings cited in the book have been carefully noted either in the body of the book or in the foot-notes wherever such information has been thought likely to be useful. It is expected that this feature of the book will materially add to its usefulness for practical purposes.

The principles of interpretation of fiscal enactments, the history of stamp legislation in India and other matters of a general and introductory nature have been dealt with in the Preamble.

In the Preface to their edition of the Court-fees Act, the Authors had occasion to point out the defects of draftsmanship of that Act. The Stamp Act is an enactment which is much better drafted than the Court-fees Act. But the Authors wish to avail



themselves of this opportunity to point out some of the defects which they have noticed in the Act. These are as follows :

(1) Under Section 5 of the Act, where an instrument comprises or relates to several distinct matters, it must be stamped with the aggregate of the amounts of stamp duty which would have been chargeable if a separate instrument had been executed in respect of each of the matters. In other words, for the purpose of computing the stamp duty chargeable, the instrument is treated as if it consisted of several separate instruments. But where the duty chargeable under Section 5 or the full amount of such duty has not been paid, the entire instrument must be treated, under the present wording of Section 35, as not duly stamped and as not admissible in evidence. There, however, seems to be no objection, in the reason of the thing, to treat the instrument in such cases as consisting of as many separate instruments as there are distinct matters covered by it and if the duty paid is sufficient in regard to any such matter, to treat the document as admissible for the purpose of proving that particular matter. In fact, even under the section as it stands, courts have sought to admit documents in this piecemeal fashion. (See S. 35, Note 8.) But such a course is not justified on the present wording of the section and necessary amendments in the Act are called for in order to permit the partial admission of documents comprising distinct matters and bearing stamp duty sufficient for one or more of such matters but not for all of them.

(2) Exemption 2 under Article 40 exempts from stamp duty a letter of hypothecation accompanying a bill of exchange. What does this mean? Will this exemption enable any person who wishes to execute a simple mortgage of his immovable property to avoid the stamp duty payable on a mortgage-deed by simply giving a bill of exchange accompanied by a letter of hypothecation of the property? (See *Biswanath v. Govind Chandra*, (1919) 6 A. I. R. 1919 Cal. 235.) The matter requires clarification. (See Art. 40, Note 12.)

(3) A declaration of trust does not require the transfer of the property to the trustee where the author of the trust is himself the trustee. (Trusts Act, S. 6). In such a case, the declaration of trust can be effected by an instrument, which merely bears a stamp duty of Rs. 15 under Article 64. Under Article 62 (e), the maximum duty on a transfer, without consideration, of any trust property by the trustee to the beneficiary is Rs. 5. Hence, under the Act as it stands, it seems that a person who wishes to make a gift of his property can avoid payment of *ad valorem* duty according to the value of the property under Article 33 by first declaring a trust in regard to the property under which he himself is the trustee and then transferring the property without consideration to the beneficiary. This was not probably intended by the Legislature. But so long as the statute is what it is, the subject is entitled to avail himself of all the loopholes in it in order to avoid paying higher stamp duty.

(4) In various cases, (e. g., gifts, conveyances, etc.) the *ad valorem* duty is fixed with reference to the value of the property or consideration *as set forth* in the instrument. Section 27 requires that all the material facts necessary for fixing the value of the subject-matter of the instrument for purposes of stamp duty must be truly and fully stated in the document and failure to state the facts in the manner provided is made an offence under Section 64. But there is no machinery provided for ascertaining the true value of the property or the consideration and for levying the stamp duty on such true value. (See S. 27, Note 2.) The highest amount of fine that can be imposed under



Section 64 is Rs. 5,000 and in cases where the amount of stamp duty on a correct valuation would far exceed that amount, it is clear that there would be a temptation for people to underrate or misrepresent the value for purposes of stamp duty in the document.

(5) Section 47 is so worded that on a literal interpretation of it, the maker of an unstamped promissory note, who is himself the person who ought to have stamped it, would be able to deduct the value of the stamp from the amount which he pays in discharge of his note, thus making a profit out of his own default. (See *Bhawanji v. Devji Punja*, (1895) I.L.R. 19 Bom. 635). This is an obvious error calling for rectification.

(6) The Act makes a final decree for partition chargeable with duty as an instrument of partition. Seeing that revenue has already been collected in such a case in the shape of court-fee on the plaint, it seems like double taxation, to impose stamp duty in such a case. (See S. 2 (15), Note 15.)

(7) A doubt often arises whether the exemptions given under various Articles are of a general nature so as to apply to any instrument whether covered by the particular Article or not or whether the exemptions are only applicable to the instruments falling under the particular Article under which the exemption occurs.

(8) There are some instances of redundancy in the Act; e. g., Exemption under Article 25 which is implied in the charging portion of the Article itself; Letter of licence (Art. 38) which seems to be only a form of composition-deed as defined and provided for in Article 22.

(9) Article 15 has given rise to a conflict of decisions as to the meaning of the words "not being otherwise provided for by this Act." (See Art. 15, Note 3.) The wording of the Article is confusing and requires to be amended so as to make its scope clear.

(10) Under Article 1, an acknowledgment written or signed by the debtor is chargeable with duty. This conflicts with Section 3 under which an instrument is chargeable with duty only if it is *executed*, as "executed" means, under Section 2 (12), "signed." (See Art. 1, Note 6.)

Before concluding, the Authors wish to state that no pains have been spared in making the collection of the statutory matter and the relevant Rules and Notifications complete and up to date. But, the nature of the work is such that one cannot be sure that there are absolutely no errors or omissions. The Authors will feel grateful to any one who brings to their notice any instance of error or omission.

\* \* \* \* \*

1st September, 1945.

V. V. C.  
S. A. R.



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## ABBREVIATIONS

### REPORTS

A.I.R. 1914 All, Bom., etc. ... All India Reporter, Allahabad, Bombay, etc., sections of the respective years.	B. & Ad. ... Barnewall & Adolphus.
All. or I. L. R. All. ... Indian Law Reports, Allahabad Series.	Beng. L. R. ... Bengal Law Reports.
Agra ... Agra High Court Reports.	B. R. ... Bihar Reports.
All. L. Jour. ... Allahabad Law Journal.	Bom. or I. L. R. Bom. ... Indian Law Reports, Bombay Series.
All. W. N. ... Allahabad Weekly Notes.	Bom. H. C. R. ... Bombay High Court Reports.
All. W. R. ... Allahabad Weekly Reporter.	Bom. L. R. ... Bombay Law Reporter.
App. Cas. ... Law Reports, Appeal Cases (England).	Bom P. J. ... Bombay Printed Judgments.
	Bur. L. Jour. ... Burma Law Journal.
	Bur. L. R. ... Burma Law Reports.



- Bur. L. Tim. ... Burma Law Times.  
 Cal. or I. L. R. Cal. ... Indian Law Reports, Calcutta Series.  
 Cal. L. Jour. ... Calcutta Law Journal.  
 Cal. L. Rep. ... Calcutta Law Reports.  
 Cal. W. N. ... Calcutta Weekly Notes.  
 C. P. L. R. ... Central Provinces Law Reports.  
 Cl. & Fin. ... Clark and Finnelly (House of Lords).  
 Cr. L. J. ... Criminal Law Journal.  
 Dowl. ... Dowling's Practice Reports.  
 E. R. ... English Reports (England).  
 Ex. ... Exchequer.  
 H. L. C. ... House of Lords Cases (continuation of Clark and Finnelly).  
 Ind. App. ... Law Reports, Indian Appeals.  
 Ind. Cas. ... Indian Cases.  
 Ind. Jur. (N.S.) ... Indian Jurist (New Series).  
 Ind. Jur. (O.S.) ... Indian Jurist (Old Series).  
 Kar. (I. L. R.) ... Indian Law Reports, Karachi Series.  
 K. B. ... Law Reports King's Bench (England).  
 Knapp ... Knapp's Reports.  
 Lah. or I. L. R. Lah. ... Indian Law Reports, Lahore Series.  
 Lah. L. Jour. ... Lahore Law Journal.  
 L. J. ... Law Journal (England).  
 L. R. ... Law Reports (England).  
 L. R. A. ... Law Reporter, Allahabad.  
 L. T. ... Law Times Reports.  
 Low. Bur. Rul. ... Lower Burma Rulings.  
 Luck. or I. L. R. Luck. ... Indian Law Reports, Lucknow Series.  
 Mad. or I. L. R. Mad. ... Indian Law Reports, Madras Series.  
 Mad. H. C. R. ... Madras High Court Reports.  
 Mad. Jur. ... Madras Jurist.  
 Mad. L. Jour. ... Madras Law Journal.  
 Mad. L. Tim. ... Madras Law Times.  
 Mad. L. W. ... Madras Law Weekly.  
 Mad. W. N. ... Madras Weekly Notes.  
 M. & W. ... Meeson and Welsby (Exchequer).  
 Moo. Ind. App. ... Moore's Indian Appeals.  
 Moo. P. C. C. ... Moore's Privy Council Cases.  
 Nag. (I. L. R.) ... Indian Law Reports, Nagpur Series.  
 Nag. L. Jour. ... Nagpur Law Journal.  
 Nag. L. R. ... Nagpur Law Reports.  
 N.-W. P. H. C. R. ... North-West Provinces High Court Reports.  
 Oudh Cas. ... Oudh Cases.  
 Oudh L. Jour. ... Oudh Law Journal.  
 Oudh S. C. ... Oudh Select Cases.  
 Oudh W. N. ... Oudh Weekly Notes.  
 Pat. or I. L. R. Pat. ... Indian Law Reports, Patna Series.  
 Pat. L. Jour. ... Patna Law Journal.  
 Pat. L. Tim. ... Patna Law Times.  
 Pat. L. R. ... Patna Law Reporter.  
 Pat. L. W. ... Patna Law Weekly.  
 Pun. L. R. ... Punjab Law Reporter.  
 Pun. Re. ... Punjab Records.  
 Pun. W. R. ... Punjab Weekly Reporter.  
 Q. B. ... Law Reports, Queen's Bench (England).  
 Rang. ... Indian Law Reports, Rangoon Series.  
 Rang. L. R. ... Rangoon Law Reports.  
 Rev. Dec. ... Revenue Decisions.  
 R. R. ... Revised Reports (England).  
 R. S. C. ... Rules of the Supreme Court of England.  
 Sar ... Saraswati's Privy Council Judgments.  
 Sind L. R. ... Sind Law Reporter.  
 Suther ... Sutherland's Privy Council Judgments.  
 Suth. W. R. ... Sutherland's Weekly Reporter.  
 Times L. R. ... Times Law Reports.  
 U. P. L. R. ... United Provinces Law Reports.  
 Upp. Bur. Rul. ... Upper Burma Rulings.  
 Weir. ... Weir's Criminal Rulings.  
 W. R. (Eng.) ... Weekly Reporter (England).



A. C. A. O. ... Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.	F. N. ... Foot-Note.
A. L. O. ... Adaptation of Laws Order, 1950.	G. I. ... Government of India Act, 1915.
A. O. ... Government of India (Adaptation of Indian Laws) Order, 1937, as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.	I. O. ... The Indian (Adaptation of Existing Laws) Order, 1947.
App. ... Appendix.	Jour. ... Journal.
Art. ... Article.	L. P. ... Letters Patent.
B. R. ... Board of Revenue.	Mad. S. M. ... Madras Stamp Manual.
Beng. S. M. ... Bengal Stamp Manual.	N. ... Note.
Bihar S. M. ... Bihar Stamp Manual.	O. ... Order.
Civ. ... Civil.	P. ... Page.
C. A. ... Court of Appeal.	(P.)A.C.A.O. ... (Pakistan) Adaptation of Central Acts and Ordinances, 1949.
C. P. S. M. ... Central Provinces and Berar Stamp Manual.	P. C. ... Privy Council.
Cl. ... Clause.	Pre. ... Preamble.
Cr. ... Criminal.	Pun. S. M. ... Punjab Stamp Manual.
D. B. ... Division Bench.	Rev. ... Revenue.
F. B. ... Full Bench.	R. ... Rule.
F. C. ... Federal Court.	S. ... Section.
	Sch. ... Schedule.
	S. B. ... Special Bench.
	S. C. ... Supreme Court.
	U. P. B. R. ... United Provinces Board of Revenue.

## IN THE FOOT-NOTES TO THE COMMENTARY —

- (a) ('66) means (1866); ('04) means (1904); ('27) means (1927); ('39) means (1939).
- (b) Full year reference is given prior to 1866, like (1818) and *not* ('18); (1865) and *not* ('65) and so on, and to all English cases.
- (c) The figure preceding the A. I. R. reference denotes the *Volume* Number of the All India Reporter. Thus, in ('40) 27 A. I. R. 1940 Oudh 441, the figure 27 denotes the 27th Volume of the All India Reporter "1914" being the 1st Volume.
- (d) ✱ Indicates either a leading case or a case giving fuller reasons.
- (e) † Indicates a case which is most appropriate for the proposition.
- (f) References to Official Reports are invariably given in all cases found in the Official Reports.





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Advocate High Court  
Jammu & Kashmir  
Srinagar.

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."—Lord Cairns, in *Partington v. The Attorney-General*, (1869) 4 H. L. 100 (122).

"The Crown, however, must make out its right to the duty, and if there be a means of evading the stamp duty, so much the better for those who can evade it. It is no fraud upon the Crown, it is a thing which they are perfectly entitled to do."—Lord Esher, M. R., in *Commissioners of Inland Revenue v. Angus*, (1889) 23 Q. B. D. 579 (593).

"The first thing to be noticed is, that the thing which is made liable to the duty is an 'instrument.' If a contract of purchase and sale, or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument, the case is not within the section, and no tax is imposed. It is not the transaction of purchase and sale which is struck at; it is the instrument whereby the purchase and sale are effected which is struck at. And if anyone can carry through a purchase and sale without an instrument, then the Legislature have not reached that transaction."—*ibid*, at page 589.



[illegible]



# THE INDIAN STAMP ACT, 1899

## ACT No. II OF 1899

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#### CHAPTER I.

##### PRELIMINARY

#### SECTIONS

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2. Definitions.

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#### CHAPTER II.

##### STAMP-DUTIES.

##### *A.—Of the Liability of Instruments to Duty.*

3. Instruments chargeable with duty.
4. Several instruments used in single transaction of sale, mortgage or settlement.
5. Instruments relating to several distinct matters.
6. Instruments coming within several descriptions in Schedule I.
7. Policies of sea-insurance.
8. Bonds, debentures or other securities issued on loans under Act XI, 1879.
9. Power to reduce, remit or compound duties.

##### *B.—Of Stamps and the mode of using them.*

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# THE INDIAN STAMP ACT, 1899

## ACT No. II OF 1899

[27th January, 1899.]

### AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO STAMPS

**WHEREAS** it is expedient to consolidate and amend the law relating to Stamps ;  
**It is hereby enacted as follows :—**

#### CHAPTER I.

#### PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Indian Stamp Act, 1899.

(2) It extends to all the Provinces of India, inclusive of the Santhal Parganas, and the pargana of Spiti ; and

(3) It shall come into force on the first day of July, 1899.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

“Banker”

(1) “banker” includes a bank and any person acting as a banker :

(2) “bill of exchange” means a bill of exchange as defined by the Negotiable Bill of exchange.” Instruments Act, 1881, and includes also a hundi, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money :

“Bill of exchange payable on demand.”

(3) “bill of exchange payable on demand” includes—

(a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen ;

(b) an order for the payment of any sum of money weekly, monthly or at any other stated periods ; and



(c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn :

(4) “bill of lading” includes a “through bill of lading,” but does not include “Bill of lading.” a mate’s receipt :

“Bond.” (5) “bond” includes—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another :

(6) “chargeable” means, as applied to an instrument executed or first executed “Chargeable.” after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in the Provinces when such instrument was executed or, where several persons executed the instrument at different times, first executed :

(7) “cheque” means a bill of exchange drawn on a specified banker and not “Cheque.” expressed to be payable otherwise than on demand :

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“Collector.” (9) “Collector”—

(a) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a district ; and

(b) includes a Deputy Commissioner and any officer whom the collecting Government may, by notification in the official Gazette, appoint in this behalf :

(10) “conveyance” includes a conveyance on sale and every instrument by “Conveyance.” which property, whether moveable or immoveable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I :

(11) “duly stamped,” as applied to an instrument, means that the instrument “Duly stamped.” bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in the Provinces.

“Executed” and (12) “executed” and “execution,” used with reference to “execution.” instruments, mean “signed” and “signature” :

“Collecting Go- (12A) “collecting Government” means—  
vernment.”

(a) in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance,



proxies and receipts, and in relation to any other stamp duty chargeable under this Act and falling within item 59 in List I in the Seventh Schedule to the Government of India Act, 1935, the Central Government ;

(b) save as aforesaid, the Provincial Government :

“Impressed stamp.”

(13) “impressed stamp” includes—

(a) labels affixed and impressed by the proper officer, and

(b) stamps embossed or engraved on stamped paper :

“Instrument.” (14) “instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded :

“Instrument of partition.” (15) “instrument of partition” means any instrument whereby co-owners of of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court and an award by an arbitrator directing a partition :

“Lease.”

(16) “lease” means a lease of immoveable property, and includes also—

(a) a patta ;

(b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immoveable property ;

(c) any instrument by which tolls of any description are let ;

(d) any writing on an application for a lease intended to signify that the application is granted :

“Marketable security.” (16A) “marketable security” means a security of such a description as to be capable of being sold in any stock market in the Provinces or in the United Kingdom :

“Mortgage-deed.” (17) “mortgage-deed” includes every instrument whereby, for the purpose of of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property :

“Paper.” (18) “paper” includes vellum, parchment or any other material on which an instrument may be written :

“Policy of insurance.”

(19) “policy of insurance” includes—

(a) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event ;

(b) a life-policy and any policy insuring any person against accident or sickness, and any other personal insurance ;



"Policy of sea-insurance" or "sea-policy."

(20) "policy of sea-insurance" or "sea-policy"—

- (a) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel ; and
- (b) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea risk within the meaning of clause (a), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance :

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance :

(21) "power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it :

(22) "promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881 ;

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen :

"Receipt."

(23) "receipt" includes any note, memorandum or writing—

- (a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or
- (b) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or
- (c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or
- (d) which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person :

(24) "settlement" means any non-testamentary disposition, in writing, of moveable or immoveable property made—

- (a) in consideration of marriage,
- (b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or



(c) for any religious or charitable purpose ;  
and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition : and

(25) "soldier" includes any person below the rank of non-commissioned officer "Soldiers." who is enrolled under the Indian Army Act, 1911.

## CHAPTER II.

### STAMP-DUTIES.

#### *A.—Of the Liability of Instruments to Duty.*

3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say—

- (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in the Provinces on or after the first day of July, 1899 ;
- (b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out the Provinces on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in the Provinces ; and
- (c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of the Provinces on or after that day, relates to any property situate, or to any matter or thing done or to be done, in the Provinces and is received in the Provinces :

Provided that no duty shall be chargeable in respect of—

- (1) any instrument executed by, or on behalf of, or in favour of, the Crown in cases where, but for this exemption, the Crown would be liable to pay the duty chargeable in respect of such instrument ;
- (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act XIX of 1838, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts.

4. (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule.

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(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument :

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments relating to several distinct matters.

6. Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties :

Instruments coming within several descriptions in Schedule I.

Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

7. (1) No contract for sea-insurance (other than such insurance as is referred to in section 506 of the Merchant Shipping Act, 1894), shall be valid unless the same is expressed in a sea-policy.

Policies of sea-insurance.

(2) No sea-policy made for time shall be made for any time exceeding twelve months.

(3) No sea-policy shall be valid unless it specifies the particular risk or adventure, or the time, for which it is made, the names of the subscribers or under-writers, and the amount or amounts insured.

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extent to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

8. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such loan, be chargeable with a duty of one per centum on the total amount of the bonds, debentures or other securities issued by it, and such bonds, debentures or other securities need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

Bonds, debentures or other securities issued on loans under Act XI, 1879.



(2) The provisions of sub-section (1) exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not :

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other securities from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1897, when such duty has not already been paid or remitted by order issued by the Central Government.

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government of sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

Power to reduce,  
remit or compound  
duties.

9. The collecting Government may, by rule or order published in the official Gazette,—

- (a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and
- (b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities.

*B.—Of Stamps and the mode of using them.*

10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

Duties how to  
be paid.

- (a) according to the provisions herein contained ; or,
  - (b) when no such provision is applicable thereto—as the collecting Government may by rule direct.
- (2) The rules made under sub-section (1) may, among other matters, regulate,—
- (a) in the case of each kind of instrument—the description of stamps which may be used ;
  - (b) in the case of instruments stamped with impressed stamps—the number of stamps which may be used ;



- (c) in the case of bills of exchange or promissory notes written in any Oriental language—the size of the paper on which they are written.

Use of adhesive stamps.

11. The following instruments may be stamped with adhesive stamps, namely :—

- (a) instruments chargeable with the duty of one anna or half an anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets ;
- (b) bills of exchange, and promissory notes drawn or made out of the Provinces ;
- (c) entry as an advocate, vakil or attorney on the roll of a High Court ;
- (d) notarial acts, and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

12. (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again ; and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

13. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

Instruments stamped with impressed stamps how to be written.

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written :

Only one instrument to be on same stamp.

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.



15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.  
 Instrument written contrary to section 13 or 14 deemed unstamped.

16. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument, by endorsement under the hand of the Collector or in such other manner (if any) as the collecting Government may by rule prescribe.  
 Denoting duty.

*C.—Of the time of stamping Instruments.*

17. All instruments chargeable with duty and executed by any person in the Provinces shall be stamped before or at the time of execution.  
 Instruments executed in British India.

18. (1) Every instrument chargeable with duty executed only out of the Provinces and not being a bill of exchange, or promissory note, may be stamped within three months after it has been first received in the Provinces.  
 Instruments other than Bills and notes executed out of the Provinces.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the collecting Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

19. The first holder in the Provinces of any bill of exchange payable otherwise than on demand, or promissory note drawn or made out of the Provinces shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in the Provinces affix thereto the proper stamp and cancel the same :  
 Bills and notes drawn out of the Provinces.

Provided that,—

(a) if, at the time any such bill of exchange, or note comes into the hands of any holder thereof in the Provinces, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled ;

(b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.



*D.—Of valuations for Duty.*

20. (1) Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency other than that of the Provinces, such duty shall be calculated on the value of such money in the currency of the Provinces according to the current rate of exchange on the day of the date of the instrument.

Conversion of amount expressed in foreign currencies.

(2) The Central Government may, from time to time, by notification in the official Gazette prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of the Provinces for the purposes of calculating stamp-duty, and such rate shall be deemed to be the current rate for the purposes of subsection (1).

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

Stock and marketable securities how to be valued.

22 Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Instruments reserving interest.

23A. (1) Where an instrument (not being a promissory note or bill of exchange)—

Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.

- (a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or
- (b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security.

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5 (c) of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.



24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty :

How transfer in consideration of debt, or subject to future payment, etc., to be charged.

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

*Explanation.*—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale :

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

#### *Illustrations.*

(1) A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp-duty is payable on Rs. 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp-duty is payable on Rs. 10,000 less the amount of stamp-duty already paid for the mortgage.

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be,—

Valuation in case of annuity, etc.

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount ;

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due ; and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest

Stamp where value of subject-matter is indeterminate.



amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient :

Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

- (a) when the lease has been granted by or on behalf of the Crown, at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the Crown under the lease ; or
- (b) when the lease has been granted by any other person, at twenty thousand rupees a year ;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease :

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Facts affecting duty to be set forth in instrument.

28. (1) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

Direction as to duty in case of certain conveyances.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.



(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value or the original consideration ; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers :

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

*E.—Duty by whom payable.*

Duties by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,—

(a) in the case of any instrument described in any of the following articles of Schedule I, namely :—

- No. 2 (Administration Bond),
- No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),
- No. 13 (Bill of exchange),
- No. 15 (Bond),
- No. 16 (Bottomry Bond),
- No. 26 (Customs Bond),
- No. 27 (Debenture),
- No. 32 (Further charge),
- No. 34 (Indemnity-bond),
- No. 40 (Mortgage-deed),
- No. 49 (Promissory-note),
- No. 55 (Release),
- No. 56 (Respondentia Bond),
- No. 57 (Security-bond or Mortgage-deed),
- No. 58 (Settlement),
- No 62 (a) (Transfer of shares in an incorporated company or other body corporate),



No. 62 (b) (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8),

No. 62 (c) (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance),—

by the person drawing, making or executing such instrument :

(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance :

(bb) in the case of a policy of fire-insurance—by the person issuing the policy :

(c) in the case of a conveyance (including a re-conveyance of mortgaged property)—by the grantee : in the case of a lease or agreement to lease—by the lessee or intended lessee :

(d) in the case of a counterpart of a lease—by the lessor :

(e) in the case of an instrument of exchange—by the parties in equal shares :

(f) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates : and

(g) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

30. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.

### CHAPTER III.

#### ADJUDICATION AS TO STAMPS.

31. (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct,



the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly :

Provided that—

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable ; and

(b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

32. (1) When an instrument brought to the Collector under section 31, is, in his opinion, one of a description chargeable with duty, and—  
Certificate by Collector.

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be ; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Provided that nothing in this section shall authorise the Collector to endorse—

(a) any instrument executed or first executed in the Provinces and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be ;



- (b) any instrument executed or first executed out of the Provinces and brought to him after the expiration of three months after it has been first received in the Provinces ; or
- (c) any instrument chargeable with the duty of one anna or half an anna or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

#### CHAPTER IV.

##### INSTRUMENTS NOT DULY STAMPED.

33. (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the Provinces when such instrument was executed or first executed :

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 :

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,—

(a) the collecting Government may determine what offices shall be deemed to be public offices ; and

(b) the collecting Government may determine who shall be deemed to be persons in charge of public offices.

34. Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.



**35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :**

Instruments not duly stamped inadmissible in evidence, etc.

**Provided that—**

- (a) any such instrument not being an instrument chargeable with a duty of one anna or half an anna only, or a bill of exchange or promissory note shall subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;
- (b) where any person from whom a stamp receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it ;
- (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters, and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped ;
- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 ;
- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Crown, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

**36. Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.**

Admission of instrument where not to be questioned.

**37. The collecting Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.**

Admission of improperly stamped instruments.



**38. (1)** When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

**39. (1)** When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

**40. (1)** When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of one anna or half an anna only or a bill of exchange or promissory note, he shall adopt the following procedure :—

- (a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be :
- (b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees ; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees :

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.



41. If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty of one anna or half an anna only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed.

42. (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped. and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct :

Provided that—

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate ;

(b) nothing in this section shall affect the Code of Civil Procedure section 144, clause 3.

43. The taking of proceedings or the payment of a penalty under this Chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument :

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.



a promissory note, may have been delivered to the payee : provided that another completed and duly stamped bill of exchange, or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, or note :

(d) the stamp used for an instrument executed by any party thereto which—

- (1) has been afterwards found to be absolutely void in law from the beginning :
- (2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended :
- (3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed :
- (4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended :
- (5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose :
- (6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value :
- (7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value :
- (8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

*Explanation.*—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.

Application for relief under section 49 when to be made.

50. The application for relief under section 49 shall be made within the following periods, that is to say,—



- (1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument :
- (2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled :
- (3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed :

Provided that—

- (a) when the spoiled instrument has been for sufficient reasons sent out of the Provinces, the application may be made within six months after it has been received back in the Provinces :
- (b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

51. The Chief Controlling Revenue-authority or the Collector if empowered by the Chief Controlling Revenue-authority in this behalf may, without limit of time, make allowance for stamped papers used for printed forms of instruments by any banker or by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said banker, company or body corporate, provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

52. (a) When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty ; or

(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13 ;

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.



- (b) if required and he thinks fit, stamps of any other description to the same amount in value ; or,
- (c) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

54. When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

Allowance for stamps not re-quired for use.

- (a) that such stamp or stamps were purchased by such person with a *bona fide* intention to use them ; and
- (b) that he has paid the full price thereof ; and
- (c) that they were so purchased within the period of six months next preceding the date on which they were so delivered :

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

55. When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month, repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less :

Allowance on renewal of certain debentures.

Provided that the original debenture is produced before the Collector and cancelled by him in such manner as the Provincial Government may direct.

*Explanation.*—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes :—

- (a) the issue of two or more debentures in place of one original debenture, the total amount secured being the same ;
- (b) the issue of one debenture in place of two or more original debentures, the total amount secured being the same ;
- (c) the substitution of the name of the holder at the time of renewal for the name of the original holder ; and
- (d) the alteration of the rate of interest or the dates of payment thereof.



## CHAPTER VI.

## REFERENCE AND REVISION.

Control of, and statement of case to, Chief Controlling Revenue-authority.

56. (1) The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to section 26 shall in all cases be subject to the control of the Chief Controlling Revenue, authority.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

Statement of case by Chief Controlling Revenue-authority to High Court, Chief Court, or Judicial Commissioner's Court.

57. (1) The Chief Controlling Revenue-authority may state any case referred to it under section 56, sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon,—

(a) if it arises in the Andaman and Nicobar Islands, the High Court at Calcutta ;

(b) if it arises in Ajmer-Merwara, to the High Court at Allahabad ; and

(c) if it arises in any other Province or part of a Province, to the High Court of that Province or part of the Province.

(2) Every such case shall be decided by not less than three Judges of the High Court, Chief Court or Judicial Commissioner's Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

58. If the High Court, is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Power of High Court, to call for further particulars as to case stated.

59. (1) The High Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgement thereon containing the grounds on which such decision is founded,

Procedure in disposing of case stated.

(2) The Court shall send to the Revenue-authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar ; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.



60. (1) If any Court, other than a Court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court, to which, if he were the Chief Controlling Revenue-authority, he would, under section 57, refer the same.

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue-authority and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

61. (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding, under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument :

Provided that—

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was



payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty ;

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

## CHAPTER VII.

### CRIMINAL OFFENCES AND PROCEDURE.

Penalty for executing instrument etc., not duly stamped.

62. (1) Any person—

(a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange payable otherwise than on demand or promissory note without the same being duly stamped ; or

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped ; or

(c) voting or attempting to vote under any proxy not duly stamped ;

shall for every such offence be punishable with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

63. Any person required by section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

Penalty for failure to cancel adhesive stamp.

Penalty for omission to comply with provisions 27.

Any person who, with intent to defraud the Govern-

ment in which all the facts and circumstances required to be proved in such instrument are not fully and



(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances ; or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act ;

shall be punishable with fine which may extend to five thousand rupees.

Penalty for refusal to give receipt, and for devices to evade duty on receipt.

65. Any person who,—

(a) being required under section 30 to give a receipt, refuses or neglects to give the same ; or

(b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered.

shall be punishable with fine which may extend to one hundred rupees.

Penalty for not making out policy, or making one not duly stamped.

66. Any person who—

(a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiveing, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance ; or

(b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy ;

shall be punishable with fine which may extend to two hundred rupees.

67. Any person drawing or executing a bill of exchange payable otherwise than on demand or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

Penalty for post-dating bills, and for other devices to defraud the revenue.

68. Any person who—

(a) with intent to defraud the Government any bill of exchange



(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same ; or

(c) with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force ;

shall be punishable with fine which may extend to one thousand rupees.

Penalty for breach of rule relating to sale of stamps and for unauthorised sale.

69. (a) Any person appointed to sell stamps who disobeys any rule made under section 74 ; and

(b) any person not so appointed who sells or offers for sale any stamp (other than a one anna or half an anna adhesive stamp) ;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

70. (1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as the collecting Government generally, or the Collector specially authorises in that behalf.

Institution and conduct of prosecutions.

(2) The Chief Controlling Revenue-authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48.

71. No Magistrate other than a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

Jurisdiction of Magistrates.

72. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found as well as in any district or presidency-town in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

Place of trial.

## CHAPTER VIII.

### SUPPLEMENTAL PROVISIONS.

73. Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all

Books, etc., to be open to inspection.



reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge

Powers to make  
rules relating to  
sale of stamps.

74. The collecting Government may make rules for regulating—

- (a) the supply and sale of stamps and stamped papers,
- (b) the persons by whom alone such sale is to be conducted, and
- (c) the duties and remuneration of such persons :

Provided that such rules shall not restrict the sale of one anna or half an anna adhesive stamps.

75. The collecting Government may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.

Power to make  
rules generally to  
carry out Act.

Publication of  
rules.

76. (1) All rules made under this Act shall be published in the official Gazette.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

76A. The Central Government, subject to the provisions of section 124 (1) of the Government of India Act, 1935, and the Provincial Government, may by notification in the official Gazette delegate—

Delegation of  
certain powers.

- (a) all or any of the powers conferred on it by sections 2 (9), 33 (3) (b), 70 (1), 74 and 78 to the Chief Controlling Revenue-authority ; and
- (b) all or any of the powers conferred on the Chief Controlling Revenue-authority by sections 45 (1) (2), 56 (1) and 70 (2) to such subordinate Revenue-authority as may be specified in the notification.

77. Nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.

Saving as to  
courtfees.

78. Every Provincial Government shall make provision for the sale of translations of this Act in the principal vernacular languages of the territories administered by it at a price not exceeding four annas per copy.

Act to be trans-  
lated and sold  
cheaply.

79. [Repeal.] Repealed by Section 3 and Schedule 11 of the Repealing and Amending Act, 1914 (X of 1914).



## SCHEDULE I.

## STAMP-DUTY ON INSTRUMENTS.

(See section 3.)

Description of Instrument.	Proper Stamp-duty.
<p><b>1. ACKNOWLEDGMENT</b> of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession : provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.</p>	One anna.
<p><b>2. ADMINISTRATION-BOND</b>, including a bond given under section 256 of the Indian Succession Act, 1865, section 6 of the Government Savings Banks Act, 1873, section 78 of the Probate and Administration Act, 1881, or section 9 or section 10 of the Succession Certificate Act, 1889,—</p> <p>(a) where the amount does not exceed Rs. 1,000 ;</p> <p>(b) in any other case</p>	<p>The same duty as a Bond (No. 15) for such amount.</p> <p>Five rupees.</p>
<p><b>3. ADOPTION-DEED</b>, that is to say any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt.</p>	Ten rupees.
<p><b>ADVOCATE.</b> See Entry as an Advocate (No. 30).</p>	
<p><b>4. AFFIDAVIT</b>, including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.</p> <p><i>Exemptions.</i></p> <p>Affidavit or declaration in writing when made—</p> <p>(a) as a condition of enrolment under the Indian Army Act, 1911 ; or the Indian Air Force Act, 1932 ;</p> <p>(b) for the immediate purpose of being filed or used in any Court or before the officer of any Court ; or</p> <p>(c) for the sole purpose of enabling any person to receive any pension or charitable allowance.</p>	One rupee.



Description of Instrument.	Proper Stamp-duty.
<b>5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT—</b>	
(a) if relating to the sale of a bill of exchange ;	Two annas.
(b) if relating to the sale of a Government security or share in an incorporated company or other body corporate ;	Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share.
(c) if not otherwise provided for .. ..	Eight annas.
<i>Exemptions.</i>	
<b>Agreement or memorandum of agreement—</b>	
(a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No. 43 ;	
(b) made in the form of tenders to the Central Government for or relating to any loan ;	
(c) made under the European Vagrancy Act, 1874, section 17 *	
<b>AGREEMENT TO LEASE. See Lease (No. 35).</b>	
<b>6. AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE, that is to say, any instrument evidencing an agreement relating to—</b>	
(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or	
(2) the pawn or pledge of moveable property, where such deposit, pawn or pledge has been made by way of security for the repayment	

\* Now replaced by the Criminal Law (Removal of Racial Discriminations) Act, 1949 (XVII [17] of 1949).



Description of Instrument.	Proper Stamp-duty.
<p>of money advanced or to be advanced by way of loan or an existing or future debt—</p> <p>(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement ;</p> <p>(b) if such loan or debt is repayable not more than three months from the date of such instrument.</p> <p><i>Exemption.</i></p> <p>Instrument of pawn or pledge of goods if unattested.</p>	<p>The same duty as a Bill of Exchange [No 13 (b)] for the amount secured.</p> <p>Half the duty payable on a Bill of Exchange [No 13 (b)] for the amount secured.</p>
<p><b>7. APPOINTMENT IN EXECUTION OF A POWER,</b> whether of trustees or of property, moveable or immoveable, where made by any writing not being a Will.</p> <p><b>8. APPRAISEMENT OR VALUATION,</b> made otherwise than under an order of the Court in the course of a suit—</p> <p>(a) where the amount does not exceed Rs. 1,000 ;</p> <p>(b) in any other case .. .. .</p> <p><i>Exemptions.</i></p> <p>(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.</p> <p>(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.</p>	<p>Fifteen rupees.</p> <p>The same duty as a Bond (No. 15) for such amount.</p> <p>Five rupees.</p>
<p><b>9. APPRENTICESHIP-DEED,</b> including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, not being articles of clerkship (No. 11).</p>	<p>Five rupees.</p>



Description of Instrument.	Proper Stamp-duty.
<p><i>Exemption.</i></p> <p>Instruments of apprenticeship executed by a Magistrate under the Apprentices Act, 1850, or by which a person is apprenticed by or at the charge of any public charity.</p>	
<p><b>10. ARTICLES OF ASSOCIATION OF A COMPANY.</b></p>	<p>Twenty-five rupees.</p>
<p><i>Exemption.</i></p> <p>Articles of any Association not formed for profit and registered under section 26 of the Indian Companies Act, 1882.</p> <p><i>See also</i> Memorandum of Association of a Company (No. 39).</p>	
<p><b>11. ARTICLES OF CLERKSHIP</b> or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court.</p>	<p>Two hundred and fifty rupees.</p>
<p><b>ASSIGNMENT.</b> <i>See</i> Conveyance (No. 23), Transfer (No. 62), and Transfer of Lease (No. 63), as the case may be.</p>	
<p><b>ATTORNEY.</b> <i>See</i> Entry as an Attorney (No. 30), and Power-of-Attorney (No. 48).</p>	
<p><b>AUTHORITY TO ADOPT.</b> <i>See</i> Adoption-deed (No. 3).</p>	
<p><b>12. AWARD</b>, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—</p>	
<p>(a) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ;</p>	<p>The same duty as a Bond (No. 15) for such amount.</p>
<p>(b) in any other case .. .. .</p>	<p>Five rupees.</p>



Description of Instrument.				Proper Stamp-duty.											
Exemption.															
Award under the Bombay District Municipal Act, 1873, section 81 or the Bombay Hereditary Offices Act, 1874, section 18.															
13. BILL OF EXCHANGE. [as defined by S. 2 (2)] not being a Bond, bank-note or currency-note—															
				If drawn singly.			If drawn in set of two, for each part of the set.			If drawn in set of three, for each part of the set.					
(a)	*	*	* *	Rs. a. p.			Rs. a. p.			Rs. a. p.					
(b) where payable otherwise than on demand, but not more than one year after date or sight—															
				Rs.											
if the amount of the bill or note does not exceed				200	0	3	0	0	2	0	0	1	0		
if it exceeds Rs. 200 and does not exceed				400	0	6	0	0	3	0	0	2	0		
	Ditto	400	ditto	600	0	9	0	0	5	0	0	3	0		
	Ditto	600	ditto	800	0	12	0	0	6	0	0	4	0		
	Ditto	800	ditto	1,000	0	15	0	0	8	0	0	5	0		
	Ditto	1,000	ditto	1,200	1	2	0	0	9	0	0	6	0		
	Ditto	1,200	ditto	1,600	1	8	0	0	12	0	0	8	0		
	Ditto	1,600	ditto	2,500	2	4	0	1	2	0	0	12	0		
	Ditto	2,500	ditto	5,000	4	8	0	2	4	0	1	8	0		
	Ditto	5,000	ditto	7,500	6	12	0	3	6	0	2	4	0		
	Ditto	7,500	ditto	10,000	9	0	0	4	8	0	3	0	0		
	Ditto	10,000	ditto	15,000	13	8	0	6	12	0	4	8	0		
	Ditto	15,000	ditto	20,000	18	0	0	9	0	0	6	0	0		
	Ditto	20,000	ditto	25,000	22	8	0	11	4	0	7	8	0		
	Ditto	25,000	ditto	30,000	27	0	0	13	8	0	9	0	0		
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000.				9	0	0	4	8	0	3	0	0			
(c) where payable at more than one year after date or sight.				The same duty as a Bond (No. 15) for the same amount.											



Description of Instrument.	Proper Stamp-duty.
<b>14. BILL OF LADING</b> (including a through bill of lading).	<b>Four annas.</b>
<i>N.B.—If a bill of lading is drawn in parts, the proper stamp therefor must borne by each one of the set.</i>	
<i>Exemptions.</i>	
(a) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1889, and are to be delivered at another place within the limits of the same port.	
(b) Bill of lading when executed out of the Provinces and relating to property to be delivered in the Provinces.	
<b>15. BOND</b> [as defined by section 2 (5)] not being a Debenture (No. 27) and not being otherwise provided for by this Act, or by the Court-fees Act, 1870,—	
where the amount or value secured does not exceed Rs. 10.	<b>Two annas.</b>
Rs. exceed where it exceeds Rs. 10 and does not exceed 50	<b>Four annas.</b>
Ditto 50 ditto 100	<b>Eight annas.</b>
Ditto 100 ditto 200	<b>One rupee.</b>
Ditto 200 ditto 300	<b>One rupee eight annas.</b>
Ditto 300 ditto 400	<b>Two rupees.</b>
Ditto 400 ditto 500	<b>Two rupees eight annas.</b>
Ditto 500 ditto 600	<b>Three rupees.</b>
Ditto 600 ditto 700	<b>Three rupees eight annas.</b>
Ditto 700 ditto 800	<b>Four rupees.</b>
Ditto 800 ditto 900	<b>Four rupees eight annas.</b>
Ditto 900 ditto 1,000	<b>Five rupees.</b>
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	<b>Two rupees eight annas.</b>
<i>See Administration-Bond (No. 2), Bottomry Bond (No. 16), Customs Bond (No. 26), Indemnity-Bond (No. 34), Respondentia Bond (No. 56), Security Bond (No. 57).</i>	



Description of Instrument.	Proper Stamp-duty.
<p><b>15. BOND—contd.</b></p> <p style="text-align: center;"><i>Exemptions.</i></p> <p><b>Bond, when executed by—</b></p> <p>(a) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act ;</p> <p>(b) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.</p> <p><b>16. BOTTOMRY BOND</b>, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.</p> <p><b>17. CANCELLATION</b>—Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for.</p> <p><i>Sae also</i> Release (No. 55), Revocation of Settlement (No. 58-B), Surrender of Lease (No. 61), Revocation of trust (No. 64-B).</p> <p><b>18. CERTIFICATE OF SALE</b> (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue Officer—</p> <p>(a) where the purchase-money does not exceed Rs. 10 ;</p> <p>(b) where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25 ;</p> <p>(c) in any other case . . . . .</p>	<p>The same duty as a Bond (No. 15) for the same amount.</p> <p>Five rupees.</p> <p>Two annas.</p> <p>Four annas.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase-money only.</p>



and for every Rs. 500 or part thereof in excess of Rs. 1,000.



Description of Instrument.	Proper Stamp-duty.
<p><b>23. CONVEYANCE—contd.</b></p> <p><i>Exemption.</i></p> <p>Assignment of copyright by entry made under the Indian Copyright Act, 1847, section 5.</p> <p><b>CO-PARTNERSHIP-DEED.</b> See Partnership (No. 46).</p> <p><b>24. COPY OR EXTRACT</b> certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees—</p> <p>(i) if the original was not chargeable with duty if the duty with which it was chargeable does not exceed one rupee ;</p> <p>(ii) in any other case . . . . .</p> <p><i>Exemptions.</i></p> <p>(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.</p> <p>(b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, divorces, deaths or burials</p>	<p>Eight annas.</p> <p>One rupee.</p>
<p><b>25. COUNTERPART OR DUPLICATE</b> of any instrument chargeable with duty and in respect of which the proper duty has been paid,—</p> <p>(a) if the duty with which the original instrument is chargeable does not exceed one rupee ;</p> <p>(b) in any other case . . . . .</p> <p><i>Exemption.</i></p> <p>Counterpart of any lease granted to a cultivator when such lease is exempted from duty.</p>	<p>The same duty as is payable on the original.</p> <p>One rupee.</p>



Description of Instrument.	Proper Stamp-duty.
<b>26. CUSTOMS BOND—</b>	
(a) where the amount does not exceed Rs. 1,000 ;	The same duty as a Bond (No. 15) for such amount.
(b) in any other case . . . . .	Five rupees.
<b>27. DEBENTURE</b> (whether a mortgage debenture or not), being a marketable security transferable—	
(a) by endorsement or by a separate instrument of transfer ;	The same duty as a Bond (No. 15) for the same amount.
(b) by delivery . . . . .	The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.
<p><i>Explanation.</i>—The term “Debenture” includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.</p> <p><i>Exemption.</i></p> <p>A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part their property to trustees for the benefit of the debenture-holders : provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.</p> <p>See also Bond (No. 15), and section 8 and 55.</p>	
<b>DECLARATION OF ANY TRUST.</b> See Trust (No. 64).	
<b>28. DELIVERY-ORDER IN RESPECT OF GOODS,</b> that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees.	One anna.



Description of Instrument.	Proper Stamp-duty.
<b>DEPOSIT OF TITLE-DEEDS.</b> <i>See</i> Agreement relating to Deposit of Title-deeds, Pawn or Pledge (No. 6).	
<b>DISSOLUTION OF PARTNERSHIP.</b> <i>See</i> partnership (No. 46).	
29. <b>DIVORCE</b> —Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage.	One rupee.
<b>DOWER</b> —Instrument of. <i>See</i> Settlement (No. 58).	
<b>DUPLICATE.</b> <i>See</i> Counterpart (No. 25).	
30. <b>ENTRY AS AN ADVOCATE, VAKIL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT</b> under the Indian Bar Councils Act, 1926, or in exercise of powers conferred on such Court by Letters Patent or by the Legal Practitioners Act, 1884—	
(a) in the case of an Advocate or Vakil ;	Five hundred rupees.
(b) in the case of an Attorney . . . . .	Two hundred and fifty rupees.
<i>Exemption.</i>	
Entry of an advocate, vakil or attorney on the roll of any High Court when he has previously been enrolled in a High Court.	
31. <b>EXCHANGE OF PROPERTY</b> —Instrument of.	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument.
<b>EXTRACT.</b> <i>See</i> Copy (No. 24).	
32. <b>FURTHER CHARGE</b> —Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	
(a) when the original mortgage is one of the description referred to in clause (a) or Article No. 40 (that is, with possession) ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.



Description of Instrument.	Proper Stamp-duty.
<b>32. FURTHER CHARGE—<i>contd.</i></b>	
<p>(b) when such mortgage is one of the description referred to in clause (b) of Article No. 40 (that is, without possession)—</p>	
<p>(i) if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument ;</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.</p>
<p>(ii) if possession is not so given . . . . .</p>	<p>The same duty as a Bond (No. 15) for the amount of the further charge secured by such instrument.</p>
<p><b>33. GIFT—Instrument of, not being a Settlement (No. 58) or will or Transfer (No. 62).</b></p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument.</p>
<p><b>HIRING AGREEMENT</b> or agreement for service. <i>See Agreement (No. 5).</i></p>	
<p><b>34. INDEMNITY BOND . . . . .</b></p>	<p>The same duty as a Security-Bond (No. 57) for the same amount.</p>
<p><b>INSPECTORSHIP-DEED.</b> <i>See Composition-Deed (No. 22).</i></p>	
<p><b>INSURANCE.</b> <i>See Policy of Insurance (No. 47).</i></p>	
<p><b>35. LEASE, including an under-lease or sub-lease and any agreement to let or sub-let—</b></p>	
<p>(a) where by such lease the rent is fixed and no premium is paid or delivered—</p>	
<p>(i) where the lease purports to be for a term of less than one year ;</p>	<p>The same duty as a Bond (No. 15) for the whole amount payable or deliverable under such lease.</p>



## Description of Instrument.

## Proper Stamp-duty.

**85. LEASE—contd.**

- (ii) where the lease purports to be for a term of not less than one year but not more than three years ;
- (iii) where the lease purports to be for a term in excess of three years ;
- (iv) where the lease does not purport to be for any definite term ;
- (v) where the lease purports to be in perpetuity.
- (b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved.
- (c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.

The same duty as a Bond (No. 15) for the amount or value of the average annual rent reserved.

The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved.

The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent which would be paid for delivered for the first ten years if the lease continued so long.

The same duty as a Conveyance (No. 23) for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.

The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.

The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered.



Description of Instrument.	Proper Stamp-duty.
35. LEASE— <i>contd.</i>	
<p style="text-align: center;"><i>Exemption.</i></p> <p>(a) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.</p>	<p>Provided that, in any case when an agreement to lease is stamped with the <i>ad valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.</p>
<p style="text-align: center;"><i>Exemption.</i></p>	
<p>(a) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.</p>	
36. LETTER OF ALLOTMENT OF SHARES in any company or proposed company, or in respect of any loan to be raised by any company or proposed company.	Two annas.
<p><i>See also Certificate or other Document (No. 19).</i></p>	
37. LETTER OF CREDIT, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn. LETTER OF GUARANTEE. <i>See</i> Agreement (No. 5).	Two annas.
38. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors, that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	Ten rupees.
39. MEMORANDUM OF ASSOCIATION OF A COMPANY—	
(a) if accompanied by articles of association under section 37 of the Indian Companies Act, 1882 ;	Fifteen rupees.
(b) if not so accompanied .. .. .	Forty rupees.
<p style="text-align: center;"><i>Exemption.</i></p>	
Memorandum of any association not formed for profit and registered under section 26 of the Indian Companies Act, 1882.	



Description of Instrument.	Proper Stamp-duty.
<p><b>40. MORTGAGE-DEED</b>, not being an Agreement relating to deposit of Title-Deeds, Pawn or Pledge (No. 6), Bottomry Bond (No. 16), Mortgage of a Crop (No. 41), Respondentia Bond (No. 56), or Security-Bond (No. 57)—</p>	
<p>(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ;</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount secured by such deed.</p>
<p>(b) when possession is not given or agreed to be given as aforesaid ;</p>	<p>The same duty as a Bond (No. 15) for the amount secured by such deed.</p>
<p><i>Explanation.</i>—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this article.</p>	
<p>(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped—</p>	<p>Eight annas.</p>
<p>for every sum secured not exceeding Rs. 1,000 ;</p>	<p>Eight annas.</p>
<p>and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000.</p>	
<p><i>Exemptions.</i></p>	
<p>(1) Instruments executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security for the repayment of such advances.</p>	
<p>(2) Letter of hypothecation accompanying a bill of exchange.</p>	
<p><b>41. MORTGAGE OF A CROP</b>, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—</p>	
<p>(a) when the loan is repayable not more than three months from the date of the instrument—</p>	



Description of Instrument.	Proper Stamp-duty.
41. MORTGAGE OF A CROP— <i>contd.</i>	
for every sum secured not exceeding Rs. 200 ;	One anna.
and for every Rs. 200 or part thereof secured in excess of Rs. 200 ;	One anna.
(b) when the loan is repayable more than three months, but not more than eighteen months, from the date of the instrument—	
for every sum secured not exceeding Rs. 100 ;	Two annas.
and for every Rs. 100 or part thereof secured in excess of Rs. 100.	Two annas.
42. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a Protest (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.	One rupee.
<i>See also</i> Protest of Bill or Note (No. 50).	
43. NOTE OF MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal—	
(a) of any goods exceeding in value twenty rupees ;	Two annas.
(b) of any stock or marketable security exceeding in value twenty rupees.	Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the stock or security.
44. NOTE OF PROTEST BY THE MASTER OF A SHIP.	Eight annas.
<i>See also</i> Protest by the Master of a Ship (No. 51).	
ORDER FOR THE PAYMENT OF MONEY. <i>See</i> Bill of Exchange (No. 13).	



## Description of Instrument.

## Proper Stamp-duty.

45. **PARTITION**—Instrument of [as defined by section 2 (15)].

The same duty as a Bond (No. 15) for the amount of the value of the separated share or shares of the property.

*N.B.*—The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated :

Provided always that—

(a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument but shall not be less than eight annas :

(b) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue :

(c) where a final order for effecting a partition passed by any Revenue authority or any Civil Court, or an award by



Description of Instrument.	Proper Stamp-duty.	
45. PARTITION— <i>contd.</i>	an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed eight annas.	
46. PARTNERSHIP—		
A.—Instrument of—		
(a) where the capital of the partnership does not exceed Rs. 500 ;	Two rupees eight annas.	
(b) in any other case .. .. .	Ten rupees.	
B.—Dissolution of .. .. .	Five rupees.	
PAWN OR PLEDGE. See Agreement relating to Deposit of Title-deeds, Pawn or Pledge (No. 6).		
47. POLICY OF INSURANCE—		
A.—Sea-Insurance ( <i>see</i> section 7)—		
(1) for or upon any voyage—		
(i) where the premium or consideration does not exceed the rate of two annas or one-eighth per centum of the amount insured by the policy ;		
(ii) in any other case, in respect of every full sum of one thousand five hundred rupees and also any fractional part of one thousand five hundred rupees insured by the policy :		
(2) for time—		
(iii) in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy—		
where the insurance shall be made for any time not exceeding six months ;	Two annas.	One anna.
where the insurance shall be made for any time exceeding six months and not exceeding twelve months.	Four annas.	Two annas.



Description of Instrument.	Proper Stamp-duty.
<b>47. POLICY OF INSURANCE—<i>contd.</i></b>	
<b>B.—Fire-Insurance and other classes of Insurance, not elsewhere included in this article, covering goods, merchandise, personal effects, crops, and other property against loss or damage—</b>	
(1) in respect of an original policy— (i) when the sum insured does not exceed Rs. 5,000 ; (ii) in any other case. . . . . and	Eight annas.  One-rupee.
(2) in respect of each receipt for any payment of a premium on any renewal of an original policy.	One-half of the duty payable in respect of the original policy in addition to the amount, if any chargeable under No. 53.
<b>C.—Accident and Sickness Insurance—</b>	
(a) against railway accident, valid for a single journey only ;	One anna.
<i>Exemption.</i>	
When issued to a passenger travelling by the intermediate or the third class in any railway.	
(b) in any other case—for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs. 1,000, and also where such amount exceeds Rs. 1,000, for every Rs. 1,000, or part thereof.	Two annas. Provided that, in case of a policy of insurance against death by accident when the annual premium payable does not exceed Rs. 2-8-0 per Rs. 1,000, the duty on such instrument shall be one anna for every Rs. 1,000 or part thereof of the maximum amount which may become payable under it.
<b>CC.—Insurance by way of indemnity against liability to pay damages on account of accidents to workmen employed by or under the insurer or against liability to pay compensation under the Workmen's Compensation Act, 1923, for every Rs. 100 or part thereof payable as premium.</b>	One anna.



Description of Instrument.	Proper Stamp-duty.	
47. POLICY OF INSURANCE— <i>contd.</i>	If drawn singly.	If drawn in duplicate, for each part.
D.—Life Insurance or other Insurance not specifically provided for, except such a Re-Insurance as is described in Division E of this article—		
(i) for every sum insured not exceeding Rs. 250 ;	Two annas.	One anna.
(ii) for every sum insured exceeding Rs. Rs. 250 but not exceeding Rs. 500 ;	Four annas.	Two annas.
(iii) for every sum insured exceeding, Rs. 500 but not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof in excess of Rs. 1,000.	Six annas.	Three annas.
<i>Exemption.</i>		
Policies of life-insurance granted by the Director General of Post Offices in accordance with rules for Postal Life-Insurance issued under the authority of the Central Government.		
E.—Re-Insurance by an Insurance Company, which has granted a Policy of the nature specified in Division A or Division B of this article with another company by way of indemnity or guarantee against the payment of the original insurance of a certain part of the sum insured thereby.	One-quarter of the duty payable in respect of the original insurance but not less than one anna or more than one rupee.	
<i>General Exemption.</i>		
Letter of cover or engagement to issue a policy of insurance :		
Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned.		



Description of Instrument.	Proper Stamp-duty.
<b>48. POWER-OF-ATTORNEY</b> [as defined by section 2 (21)], not being a Proxy (No. 52),—	
(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents ;	Eight annas.
(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882 ;	Eight annas.
(c) when authorising one person or more to act in a single transaction other than the case mentioned in clause (a) ;	One rupee.
(d) when authorising not more than five persons to act jointly and severally in more than one transaction or generally ;	Five rupees.
(e) when authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ;	Ten rupees.
(f) when given for consideration and authorising the attorney to sell any immoveable property ;	The same duty as a Conveyance (No. 23) for the amount of the consideration.
(g) in any other case .. .. .	One rupee for each person authorised.
	N.B.—The term “registration” includes every operation incidental to registration under the Indian Registration Act, 1877.
<i>Explanation.</i> —For the purposes of this article more persons than one when belonging to the same firm shall be deemed to be one person.	
<b>49. PROMISSORY NOTE</b> [as defined by section 2 (22)]—	
(a) when payable on demand—	
(i) when the amount or value does not exceed Rs. 250 ;	One anna.
(ii) when the amount or value exceeds Rs. 250 but does not exceed Rs. 1,000 ;	Two annas.
(iii) in any other case	Four annas.



Description of Instrument.	Proper Stamp-duty.
49. PROMISSORY NOTE— <i>contd</i>	
(b) when payable otherwise than on demand.	The same duty as a Bill of Exchange (No. 13) for the same amount payable otherwise than on demand.
50. PROTEST OF BILL OR NOTE, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a Bill of Exchange or promissory note.	One rupees.
51. PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such. <i>See also Note of Protest by the Master of a Ship (No. 44).</i>	One rupee.
52. PROXY empowering any person to vote at any one election of the members of a district or local board or of a body of municipal commissioners, or at any one meeting of (a) members of an incorporated company or other body corporate whose stock or funds is or are divided into shares and transferable, (b) a local authority or (c) proprietors, members or contributors to the funds of any institution.	Two annas.
53. RECEIPT [as defined by section 2 (23)] for any money or other property the amount or value of which exceeds twenty rupees.	One anna.
<i>Exemption.</i>	
Receipt—	
(a) endorsed on or contained in any instrument duly stamped or any instrument exempted under the proviso to section 3 (instruments executed on behalf of the Crown) or any cheque or bill of exchange payable on demand acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal-money, interest or annuity, or other periodical payment thereby secured ;	



Description of Instrument.	Proper Stamp-duty.
<p><b>53. RECEIPT—<i>contd.</i></b>  <i>Exemptions—contd.</i></p> <p>(b) for any payment of money without consideration ;</p> <p>(c) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of Inam lands ;</p> <p>(d) for pay or allowances by non-commissioned or petty officers, soldiers, sailors or airmen of His Majesty's military, naval or air forces when serving in such capacity, or by mounted police-constables ;</p> <p>(e) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned or petty officer, soldier, sailor or airman of any of the said forces and serving in such capacity ;</p> <p>(f) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned or petty officers, soldiers, sailors or airmen, and not serving the Crown in any other capacity ;</p> <p>(g) given by a headman or lambardar for land-revenue or taxes collected by him ;</p> <p>(h) given for money or securities for money deposited in the hands of any banker, to be accounted for ;</p> <p>Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for :</p> <p>Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for, or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in, any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security.</p> <p><i>See also</i> Policy of Insurance (No. 47-B (2) ).</p>	



Description of Instrument.	Proper Stamp-duty.
54. <b>RE-CONVEYANCE OF MORTGAGED PROPERTY—</b>	
(a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000 ;	The same duty as a Conveyance (No. 23) for the amount of such consideration as set forth in the Re-conveyance.
(b) in any other case .. .. .	Ten rupees.
55. <b>RELEASE</b> , that is to say, any instrument (not being such a release as is provided for by section 23A) whereby a person renounces a claim upon another person or against any specified property—	
(a) if the amount or value of the claim does not exceed Rs. 1,000 ;	The same duty as a Bond (No. 15) for such amount or value as set forth in the Release.
(b) in any other case .. .. .	Five rupees.
56. <b>RESPONDENTIA BOND</b> , that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bond (No. 15) for the amount of the loan secured.
<b>REVOCATION OF ANY TRUST OR SETTLEMENT.</b> <i>See Settlement (No. 58) ; Trust (No. 64).</i>	
57. <b>SECURITY-BOND OR MORTGAGE-DEED</b> executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,—	
(a) when the amount secured does not exceed Rs. 1,000 ;	The same duty as a Bond (No. 15) for the amount secured.
(b) in any other case .. .. .	Five rupees.
<i>Exemptions.</i>	
<b>Bond or other instrument, when executed—</b>	
(a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act ;	



Description of Instrument.	Proper Stamp-Duty.
<p><b>57. SECURITY-BOND OR MORTGAGE-DEED</b>  <i>Exemptions—contd.</i></p> <p>(b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem ;</p> <p>(c) under No. 3A of the rules made by the Provincial Government under section 70 of the Bombay Irrigation Act, 1879 ;</p> <p>(d) executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties, as security for the repayment of such advances ;</p> <p>(e) executed by officers of the Crown or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.</p>	<p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such settlement :</p>
<p><b>58. SETTLEMENT—</b>  <b>A.—Instrument of (including a deed of dower) ..</b></p> <p style="text-align: center;"><b>Exemptions.</b></p> <p>(a) Deed of dower executed on the occasion of a marriage between Muhammadans.</p>	<p>Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas.</p>
<p><b>B.—Revocation of .. .. .</b></p> <p style="text-align: center;"><i>See also Trust (No. 64).</i></p>	<p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees.</p>



Description of Instrument.	Proper Stamp-duty.
<b>59. SHARE WARRANTS</b> to bearer issued under the Indian Companies Act, 1882.	One and a half times the duty payable on a Conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant.
<p style="text-align: center;"><i>Exemptions.</i></p>	
Share warrant when issued by a Company in pursuance of the Indian Companies Act, 1882, section 30, to have effect only upon payment as composition for that duty, to the Collector of Stamp-revenue, of—	
(a) one and a half per centum of the whole subscribed capital of the company, or	
(b) if any company which has paid the said duty or composition in full subsequently issues an addition to its subscribed capital—one and a half per centum of the additional capital so issued.	
<b>SCRIP.</b> See Certificate (No. 19).	
<b>60. SHIPPING ORDER</b> for or relating to the conveyance of goods on board of any vessel.	One anna.
<b>61. SURRENDER OF LEASE—</b>	
(a) when the duty with which the lease is chargeable does not exceed five rupees ;	The duty with which lease is chargeable.
(b) in any other case . . . . .	Five rupees.
<p style="text-align: center;"><i>Exemption.</i></p>	
Surrender of lease, when such lease is exempted from duty.	
<b>62. TRANSFER</b> (whether with or without consideration)—	
(a) of shares in an incorporated company or other body corporate ;	One-half of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.
(b) of debentures, being marketable securities whether the debenture is liable to duty or not, except debentures provided for by section 8 ;	One-half of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.

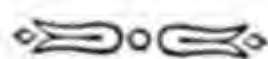


Description of Instrument.	Proper Stamp-duty.
<b>62. TRANSFER—<i>contd.</i></b>	
(c) of any interest secured by a bond, mortgage-deed or policy of insurance—	
(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees ;	The duty with which such such bond, mortgage-deed or policy of insurance is chargeable.
(ii) in any other case . . . . .	Five rupees.
(d) of any property under the Administrator General's Act, 1874, section 31 ;	Ten rupees.
(e) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	Five rupees or such smaller amount as may be chargeable under clauses (a) to (c) of this article.
<i>Exemptions.</i>	
Transfer by endorsement—	
(a) of a bill of exchange, cheque or promissory note ;	
(b) of a bill of lading, delivery order, warrant for goods, or other mercantile document title to goods ;	
(c) of a policy of insurance ;	
(d) of securities of the Central Government.	
<i>See also section 8.</i>	
<b>63. TRANSFER OF LEASE</b> by way of assignment and not by way of under-lease.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the consideration for the transfer.
<i>Exemption.</i>	
Transfer of any lease exempt from duty.	
<b>64. TRUST—</b>	
A.—Declaration of—of, or concerning, any property when made by any writing not being a Will.	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding fifteen rupees.



Description of Instrument.	Proper Stamp-duty.
<p>64. <b>TRUST</b>—<i>contd.</i></p> <p><b>B.</b>—Revocation of—of, or concerning, any property when made by any instrument other than a Will.</p> <p><i>See also Settle (No. 58).</i></p> <p><b>VALUATION.</b> <i>See Appraisement (No. 8).</i></p> <p><b>VAKIL.</b> <i>See Entry as a Vaakil (No. 30).</i></p>	<p>The same duty as a Bond (No. 15) for a sum equal to the amount or value as set forth in the instrument but not exceeding ten rupees.</p>
<p>65. <b>WARRANT FOR GOODS</b>, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.</p>	<p>Four annas.</p>

**SCHEDULE II.**—[Enactments] repealed. [ *Repealed by Section 3 and Schedule II of the Repealing and Amending Act, 1914 (10 of 1914).* ]





## STATEMENT OF OBJECTS AND REASONS

Since the Stamp Act of 1879 was passed the stamp law has been amended by ten different enactments. The present Bill proposes to repeal and re-enact in a consolidated form the whole of these enactments. It also proposes to introduce certain amendments where the working of the stamp law had disclosed defects..... The material amendments which it is proposed to introduce are referred to in the notes on clauses given below. For facility of reference a comparative table is appended to this statement, showing how each section of the Indian Stamp Act, 1879, has been dealt with in the present bill. (*This table is omitted.*)

### NOTES ON CLAUSES

*Clause 2 (2) and (3).*—The definitions of “bill of exchange” and “bill of exchange payable on demand” are taken from the English Stamp Act, 1891 (54 and 55 Vict., c. 39). It will be noted that (as is the case in England) they include many instruments which could not be classed as “bills of exchange” within the definition given by the Negotiable Instruments Act, 1881, but which for stamp purposes ought to fall within the same category.

- (7) The definition of “cheque” has been altered to bring it into accord with the definition given by the Negotiable Instruments Act, 1881.
- (11) The definition of “duly stamped” has been amended. The former definition seems scarcely applicable where the instrument was first executed abroad and afterwards stamped in British India.
- (13) A definition of “instrument” has been added.
- (18) The definition of “policy of insurance” has been amended so as to make it cover policies of every description.
- (20) The definition of “power-of-attorney” has been amended so as to make it clear that it relates only to powers-of-attorney” has been amended so as to make it clear that it relates only to powers-of-attorney and does not include all contracts creating the relationship of principal and agent.
- (21) The definition of “promissory note” is taken from the English Stamp Act, 1891.
- (22) In the definition of “receipt” the word “advertisement” is left out, as the machinery of the Act is not applicable to advertisements acknowledging receipt of money.

The definitions of “vessel,” “writing” and “schedule” have been omitted as unnecessary, being now provided for in the General Clauses Act, 1897.

*Clause 3.*—The general exemption on behalf of Government contained in Sch. II of the Act of 1879 has now been inserted in the body of the Act as a proviso to this clause.

*Clause 4.*—A proviso has been added to this clause to make it clear that the option given to the parties to elect which instrument shall be considered as the principal instrument is not to be used for the purpose of evading stamp duty.

*Clause 8.*—A penalty clause taken from the English Act has been added.

*Clause 9.*—A paragraph has been added to this clause to provide for the composition or consolidation of duties.

*Clause 12.*—The present law leaves it doubtful how adhesive stamps ought to be cancelled. A paragraph has been added to indicate a proper manner for the cancellation of such stamps.

*Clause 20.*—Section 19 of the Act of 1879 has been omitted, as the fall of the exchange value of the rupee has rendered it inapplicable. The present clause puts all

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a. See Gazette of India, 1897, Part V, page 175.



foreign currency on the same footing, and the second paragraph provides a simple machinery for fixing the rate of exchange for the purpose of stamp duty.

*Clause 24.*—An Explanation and Illustration have been added to this clause to remove doubts as to its construction.

*Clause 25.*—The drafting of this clause has been altered so as to make it applicable to annuities commencing at an indefinite future time.

*Clause 29.*—Sub-clause (h) of this clause has been amended so as to enable a Revenue-authority or Civil Court directing a partition to remit at discretion the stamp duty payable on the portion of an estate which remains undivided, in consequence of some share-holders electing to continue to hold jointly.

*Clause 33.*—A paragraph has been added to this clause to provide for the interpretation of the terms “public offices” and “persons in charge of public offices.”

*Clause 34.*—This clause has been added, because under the present law and audit officer of public accounts, before whom an unstamped receipt is produced, must impound the instrument, and has no power to require the substitution of duly stamped receipt.

*Clause 35.*—A proviso has been added which prevents the exclusion of receipts from being admitted as evidence against the person by whose fault they are unstamped. A further proviso has been added to this clause to provide that the omission of a Government officer to see that an instrument is duly stamped shall not prejudice the rights of the parties to have the document admitted in evidence.

*Clause 37.*—This clause has been inserted to provide for the case where by inadvertence a stamp of improper description has been used.

*Clause 39.*—Power is given to the Collector to act, in cases where he thinks fit to do so, without application made.

*Clause 44.*—A paragraph has been added to this clause to provide that, where a party to a suit has been obliged to pay stamp duty through the default of the other party, the duty so paid may be recovered as costs and need not be made the subject of a separate suit.

*Clause 45.*—This clause has been amended so as to give the Chief Controlling Revenue-authority power to remit as well as to refund penalties. It further provides for the refund of any excess duty which may have been paid. The effect of the clause will be to give an informal right of appeal from the Collector to the Chief Revenue-authority.

*Clause 48.*—This clause provides a simple procedure for the recovery of duties and penalties.

*Clause 49.*—The drafting of this clause has been altered so as to make its provisions clearer and to bring it more nearly into accord with the corresponding provisions of the English Stamp Duties Management Act, 1891 (54 and 55 Vict., c. 38).

*Clause 50.*—This clause is a re-draft of the proviso to S. 51 of the Act of 1879.

*Clause 51.*—This clause gives a new power to make allowances for stamp paper on printed forms used by incorporated companies where such forms have ceased to be required.

*Clause 54.*—A proviso has been added to this clause to make special provision for the case of licensed vendors of stamps.

*Clause 55.*—This clause is new and is intended to give facilities to companies in respect of renewals of debentures.

*Clause 56.*—A paragraph has been added to make it clear that in all cases a Collector is subject to the Chief Controlling Revenue-authority.

*Clause 61.*—This clause has been amended so as to give to appellate Courts revisionary powers in respect of decisions of criminal as well as of civil and revenue Courts in the cases referred to.



*Clause 64.*—A clause has been added to cover acts which may not fall within the scope of the preceding clauses, but which nevertheless are done with the intent to defraud the Government of duty.

*Clause 69.*—This clause has been amended so as to make it clear that any one, whether licensed or not, can sell one anna adhesive stamps. A corresponding provision has been made in clause 74.

*Clause 73.*—This clause intended to give Collectors power to trace unduly stamped documents is taken from the English Act.

#### NOTES OF SCHEDULE I.

**GENERAL.**—The arrangement of articles is more strictly alphabetical. The exemptions are printed under the articles to which they relate, instead of being contained in a separate schedule, and exemptions of a general character, which have from time to time been made by Notification are now embodied in the schedule itself. A few exemptions of documents executed in connexion with the business of public departments, have been removed from the Act and will be notified among the exemptions made by executive authority.

*Article 1.*—*Acknowledgment of a debt.* The attested acknowledgment of a debt is clearly in the nature of a bond and should be stamped as such.

*Article. 6.*—*Agreement to mortgage.* A mortgage by deposit of title deeds, commonly called an equitable mortgage, operates as an agreement to mortgage and is better described under that head. The duty is taken from the English Act.

*Article 13.*—*Bills of Exchange.* The exemption from stamp duty of Bills of Exchange payable on demand for less than twenty rupees has been omitted. There is no such exemption in England. As regards bills payable otherwise than on demand no alteration has been made in the duty, but the table of duties has been worked out at greater length for convenience of reference.

*Article 15.*—*Bond.* A similar table has been worked out with reference to bonds.

*Article 17.*—*Instrument of Cancellation.* This article is new.

*Article 21.*—*Cheque.* The exemption from stamp duty of cheques under twenty rupees has been omitted. There is no such exemption in England.

*Article 23.*—*Conveyance.* The duty has not been altered but the table of duties has been worked out at greater length for convenience of reference.

*Article 24.*—*Copy or Extract.* Provision has been made for stamping duplicate receipts when signed or attested.

*Article 27.*—*Debenture.* This article is new ; debentures at present come under the general conditions of bonds, but it has been considered more convenient to deal with them under a separate article.

*Article 32.*—*Instrument of Further Charge.* This article has been altered so as to impose the higher duty in cases in which possession is given in pursuance of the instrument of further charge.

*Article 35.*—A provision for a proper duty on perpetual leases has been added.

*Article 40.*—*Mortgage-deed.* An addition has been made to this article taken from the English Stamp Act, 1891, to provide for cases of mortgage by further assurance. An exemption has been added to make it clear, that ordinary pawn transactions are not liable to stamp duty. The explanation regarding possession is intended to prevent evasion of the higher duty on mortgages with possession.

*Article 41.*—*Mortgage of Crop.* This is a new article, but it represents an existing notification reducing the duty in the case of mortgage of crops.

*Article 47.*—*Policies of Insurance.* The drafting of this article has been altered to make its provisions clearer.



*Article 48.—Power-of-attorney.* It has been found that sales and mortgages are sometimes effected through the medium of powers-of-attorney. Provision has been made that in this case they should pay the same duty as conveyances. A slight extension is also made of clause (a) of the article.

*Article 49.—Promissory Notes.* A promissory note payable on demand is in the nature of a continuing security and in England pays the same duty as a bill or note not payable on demand. The same rule is now made applicable to India.

*Article 57.—*The limitation of the duty is made to extend to the case of a surety executing a bond to secure due execution of a contract.

*Article 58.—Settlement.* The revocation of a settlement is now specially charged with the same duty as the revocation of any other trust. A provision is made which has the effect of exempting from S. 27 of the Act a class of documents in which it is contrary to religious duty to express the value of the thing conveyed.

*Article 59.—Share Warrants.* This article is taken from S. 35 of the Indian Companies Act, 1882. It more appropriately comes under this Act. The duty is expressed more simply, and is the same in amount.

*Article 62.—Transfer.* A special provision has been made in this article for the transfer of debentures which are marketable securities. The article has no application to debentures payable to bearer.

J. WESTLAND.

J. M. MACPHERSON,

Secretary to the Government of India.

The 15th October, 1897.

#### **<sup>a</sup> REPORT OF THE SELECT COMMITTEE.**

We, the undersigned, Members of the Select Committee to which the Bill to consolidate and amend the law relating to stamps was referred, have considered the Bill and the papers noted in the margin (*omitted*), and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. *Clause 3 (3), "Bill of Exchange payable on demand."*—We have omitted the concluding words of cl. (b) of this definition as likely to give rise to difficulty in India, and we have provided expressly that a letter of credit is for stamp purposes to be treated as a bill payable on demand.

(10) *Conveyance.*—We have altered this definition so as to make it include all conveyances *inter vivos* which are not specifically provided for in Sch. I, and then to meet the difficulty in I. L. R. 7 Cal. 21, where it was held that the instrument in question was neither a "conveyance" nor a "settlement" nor an "instrument of partition," but an "arrangement" for the transfer of property.

We have added a definition of "impressed stamp" so as to make it clear that the term includes both a stamp impressed by the Collector and also a stamp embossed on stamp-paper.

(12) *Instrument of partition.*—We have extended this definition so as to include an award by an arbitrator directing a partition.

(22) *Promissory note.*—We have re-drafted this definition in order to make its meaning clearer.

3. *Clause 3.*—We have added to the general exemption in this clause an exemption of sales, mortgages and other dispositions of registered ships. We consider that the Indian law in this respect should conform to the law of the United Kingdom as stated in S. 721 of the Merchant Shipping Act, 1894 (57 and 58 Vict., cap. 60), and in the second general exemption at the end of the first schedule of the Stamp Act, 1891 (54 and 55 Vict., cap. 39).

a. See Gazette of India, 1898, Part V, page 251.



4. *Clause 12.*—We have added some words to sub-s. (3) to make it clear that the mode there indicated for cancelling an adhesive stamp is directory only and not intended to exclude other effective modes of cancellation.

5. *Clause 24.*—We have added a proviso to the *explanation* making a concession in a case where the mortgagee is himself the purchaser, that is to say, where he already has an interest in the property and is only purchasing the remaining interest of the mortgagor.

6. *Clause 26.*—We have added a proviso to cover the case where by accident an instrument is insufficiently stamped originally and the proper duty is subsequently paid under sections 41 and 42.

7. *Clause 29.*—We have omitted the reference to article No. 54 (re-conveyance of mortgaged property) from clause (a) and provided for the payment of duty on re-conveyances, as in the case of conveyances, by the grantee. We have also omitted clause (b) relating to copies of receipts, as we do not propose to levy stamp-duty on such instruments.

We have omitted the proviso and *illustration* as a concession of duty in respect to partitions by the amended schedule.

8. *Clause 35.*—We have provided for the case of contracts which are to be gathered from correspondence when there is no formal instrument to be stamped, by enacting that it is sufficient if any one of the letters forming part of the correspondence bears the proper stamp.

We have also altered sub-s. (b) so as to cover all cases in which a receipt is sought to be put in evidence against the person who ought to have stamped it. Lastly, we have added words to sub-s. (d) to provide for a possible case of hardship. A Collector acting under S. 32 or any other similar provision might certify an amount as being the proper duty which the Court considered less than the proper duty. We think that in such a case the instrument should be admissible in evidence as the party tendering it is not to blame.

9. *Clause 37.*—We have altered the drafting of this clause to make it clear that the right to have an instrument stamped with a stamp of improper description duly stamped is dependent on rules made by the Governor-General in Council.

10. *Clause 39.*—As the law stands the Collector cannot charge in any case a less penalty than five rupees. When the stamp is very small, *e.g.*, one or two annas, ten times the value of the stamp might be less than five rupees, and we think that in such cases it will be sufficient to recover ten times the amount of the stamp.

11. *Clause 40.*—As the law at present stands, the Collector may either impose a penalty of five rupees or a penalty of ten times the amount of the proper duty, provided that such amount does not fall short of five rupees. We think that the Collector should have a discretion to take ten times the amount of the proper duty even though they may not amount to five rupees, *e.g.*, if the amount of duty were two annas, he might be allowed to impose a penalty of Re. 1-4-0.

We have added sub-s. (3) as it was represented to us that inconvenience has been caused by requiring the Collector to return the instrument to the person who originally tendered it instead of to the impounding officer.

12. *Clause 44.*—We have added further words to sub-s. (3). If a case comes into Court and the Court does not think fit to include the amount of the duty or penalty in the costs, we think that no other proceedings to recover it should be taken.

13. *Clause 45.*—We have omitted the new sub-s. (1), as it has been represented to us that the power conferred by it is likely to be abused. It would give rise to continual applications for postponement of civil suits and the controlling authority would be flooded with fruitless applications for remission.

14. *Clause 49.*—We have inserted a new sub-s. (7), because a doubt has arisen whether the existing sub-s. (6) covers the case of a second instrument being executed solely because the stamp on the original instrument was of insufficient value.



15. *Clause 54.*—Vendors of stamps buy stamps under discount. In the case of a refund, they are of course only entitled to receive the amount actually paid and not full value of the stamps.

16. *Clause 70.*—We have provided that where an offence is compounded, the agreed composition may be recovered as if it were a penalty under section 48.

17. *Clause 75.*—We have inserted a limit of five hundred rupees fine as the maximum penalty to be imposed for breach of any rule.

18. *Schedule I. No. 1 Acknowledgment.*—We have reverted to the old duty of one anna for all acknowledgments and have added words to make it clear that the provision relates only to mere acknowledgments and does not include acknowledgments containing in addition any promise or agreement.

*No. 6. Agreement to mortgage.*—We have amended this article and reverted to the old law by confining it to instruments of equitable mortgage and excluding agreements to execute a future mortgage.

*No. 14. Award.*—We have excluded awards directing partitions, as they are specially provided for as partitions.

*No. 24. Copy or Extract.*—We have omitted the proposed duty on original or attested copies of receipts.

*No. 27. Debentures.*—We have added words to the *explanation* to show that interest coupons attached to debentures are free from tax, and that the amount payable under them is not to be taken into consideration in taxing the debenture.

*No. 45. Partition.*—We have inserted provisions reducing the duty in the case of partitions. The Bill as originally drawn imposed in the case of a partition a duty calculated on the value of the whole property partitioned, but gave the Revenue-authority or Civil Court power to remit the duty upon such portion as remained undivided. We have altered the duty so as to make it leviable only on the value of the share or shares divided off; and we have further based the levy of the duty on the assumption that at whichever partner's instance a partition takes place, it is the smaller shares that are separated from the larger, and not the larger that is separated from the smaller. It seems to us that the operation is the same whether it is the larger or the smaller shareholder who is the initiator; and the taxation on the transaction should not be different in the two cases.

The following illustrations will show how the alteration in the law proposed by us will operate, if adopted:

Four equal share-holders, each having a four-anna share, agree to partition. The duty is levied on 12 annas of the value of the whole property.

Of three share-holders, having respectively shares of one-half, one-third and one-sixth, two apply to have their shares partitioned off. The duty is levied on half the value of the property.

One share-holder having two-thirds of a property, obtains separation from the remainder who hold jointly one-third, and who desire to continue to hold their share, jointly. The duty is levied on one-third of the value of the property.

*No. 47. Policy of Insurance.*—We have provided a reduced duty for insurance against accident or sickness which is at present chargeable on the same footing as life insurance.

*No. 48. Power-of-attorney.*—We have limited cl. (6) of this article to the case of powers authorizing sales of immovable property.

*No. 49. Promissory Note.*—We have restored the old law under which promissory notes payable on demand can be stamped with a one-anna stamp.

*Nos. 58 and 64.*—We have reduced the duty in the case of the reservation of small settlements, also in the case of small trusts and reservations of trust.

19. The publication ordered by the Council has been made as follows.  
(Omitted.)



20. We think that the measure has been so altered as to require republication, and we recommend that it be republished in the Gazette of India.

J. WESTLAND.  
M. D. CHAMBERS.  
JOY GOBIND LAW.  
H. E. M. JAMES.  
F. A. NICHOLSON.  
ALLAN ARTHUR.

The 19th March, 1898.

### CHRONOLOGICAL TABLE OF REGULATIONS AND ACTS AFFECTING STAMP DUTIES.

Year	No. of Reg. or Act.	Name of Regulation or Act.	Particulars.
1797	Beng. Reg. VI. Beng. Reg. X	Appropriation of Police Funds Stamps on Abkari Licenses	Rep.; Act 29 of 1871. Rep.; Beng. Reg. 1 of 1814.
1800	Beng. Reg. VII	Stamps	Rep.; Beng. Regs. 1 and 23 of 1814.
1806	Beng. Reg. XIII	Stamps	Rep.; Beng. Reg. 1 of 1814.
1807	Beng. Reg. VIII	Stamps	Rep.; Beng. Reg. 1 of 1814.
1808	Mad. Reg. VIII	Stamp Duties	Rep.; Mad. Reg. 13 of 1816, S. 2.
1809	Beng. Reg. VII	Stamps	Rep.; Beng. Reg. 1 of 1814.
1810	Beng. Reg. XII	Amending Beng. Regs. VII and X of 1809	Rep.; Act 8 of 1868.
1812	Beng. Reg. XII	Stamps	Rep.; Beng. Reg. 1 of 1814.
1813	Beng. Reg. XVI	Rescinding Beng. Reg. XIII of 1806, S. 10	Rep.; Beng. Reg. 1 of 1814.
	Mad. Reg. II	Stamp Duties	Rep.; Mad. Reg. 13 of 1816, S. 2.
1814	Beng. Reg. I	Stamps	Rep.; Beng. Reg. 10 of 1829.
	Beng. Reg. X Beng. Reg. XXVI	Explaining Ben. Reg. I of 1814 Civil Procedure	Rep.; Act 8 of 1868. Rep.; Act 12 of 1873.
1815	Bom. Reg. XIV	Stamps	Rep.; Bom. Reg. 1 of 1827.
1816	Bom. Reg. VII	Stamps	Rep.; Bom. Reg. 1 of 1827.
	Mad. Reg. XII	Stamps	Rep.; Act 36 of 1860.
1817	Mad. Reg. VI	Stamps	Rep.; Mad. Act 2 of 1869.
1824	Beng. Reg. XVI	Stamp Duties	Rep.; Beng. Reg. 10 of 1829.
1825	Mad. Reg. II	Stamps	Rep.; Act 7 of 1870.
1826	Beng. Reg. XII	Stamps Calcutta	Rep.; Act 36 of 1860.
1827	Bom. Reg. XVIII	Stamps	Rep.; Act 36 of 1860.
1828	Bom. Reg. III	Stamps	Rep.; Act 36 of 1860.
	Bom. Reg. IV	Stamps in Deccan and Khandesh	Rep.; Act 12 of 1873.
	Bom. Reg. VI	Stamps	Rep.; Act 36 of 1860.
1829	Beng. Reg. X	Stamps	Rep.; Act 36 of 1860.
1830	Bom. Reg. VIII	Counter-stamping	Rep.; Act 36 of 1860.
1831	Bom. Reg. III	Stamps on copies of decrees	Rep.; Act 36 of 1860.
	Bom. Reg. XIV	Stamps	Rep.; Act 36 of 1860.
1840	Act XIV	Extending 9 Geo. IV, c. 14	Rep.; Act 9 of 1872.



Year	No. of Reg. or Act.	Name of Regulation or Act.	Particulars.
1842	Act IX	Lease and Release extending 4 & 5 Vict. c. 21	<i>Rep.</i> ; Act 12 of 1891.
1848	Act XVII	Stamp-duties, Madras	<i>Rep.</i> ; Act 7 of 1870.
1858	Act XIX	Authentication of certain Stamped Paper	<i>Rep.</i> ; Act 18 of 1869.
	Act XLI	Stamp Duties, Bengal	<i>Rep.</i> ; Act 18 of 1869.
1859	Act XV	Patents	<i>Rep.</i> ; Act 5 of 1888.
1860	Act XXXVI	Stamps	<i>Rep.</i> ; Act 10 of 1862.
	Act XL	Amending Act XXXVI of 1860	<i>Rep.</i> ; Act 10 of 1862.
	Act LI	Amending Act XXXVI of 1860	<i>Rep.</i> ; Act 10 of 1862.
1862	Act X	Stamp Duties	<i>Rep.</i> ; Act 7 of 1870.
1865	Act XVIII	Stamp Duties	<i>Rep.</i> ; Act 7 of 1870.
1867	Act XXVI	Stamp Duties	<i>Rep.</i> ; Act 10 of 1877.
1869	Act XVIII	The General Stamp Act, 1869	<i>Rep.</i> ; Act 1 of 1879.
1879	Act I	The Indian Stamp Act, 1879	<i>Rep.</i> ; Act 2 of 1899.
1882	Act VI	The Indian Companies Act, 1882	S. 35— <i>Rep.</i> ; Act 2 of 1899.
1884	Act IX	The Legal Practitioners Act, 1884	S. 10— <i>Rep.</i> ; Act 2 of 1899.
1888	Act I	The Indian Stamp Act (1879) Amendment Act, 1888	<i>Rep.</i> ; Act 2 of 1899.
	Act V	The Inventions and Designs Act, 1888	So much of the first Schedule as relates to the Indian Stamp Act, 1879— <i>Rep.</i> ; Act 2 of 1899.
	Act XVIII	The Burma Financial Commissioner's Act, 1888	So much of the Schedule as relates to the Indian Stamp Act, 1879— <i>Rep.</i> ; Act 2 of 1899.
1889	Act VI	The Probate and Administration Act, 1889	Sub-sections(3) and (4) of S. 18— <i>Rep.</i> ; Act 2 of 1899.
1890	Act XX	The North-Western Provinces and Oudh Act, 1890	So much of S. 38 as relates to the Indian Stamp Act, 1879— <i>Rep.</i> ; Act 2 of 1899.
1891	Act XIII	The Repealing and Amending Act, 1891	So much of Part I of the first and second Schedules as relates to the Indian Stamp Act, 1879— <i>Rep.</i> ; Act 2 of 1899.
1894	Act VI	The Indian Stamp Act (1879) Amendment Act, 1894	<i>Rep.</i> ; Act 2 of 1899.
1897	Act XIII	The Indian Stamp Act (1879) Amendment Act, 1897	
1899	Act II	The Indian Stamp Act, 1899	
1900	Act VI	Lower Burma Courts Act, 1900	Came into force on 1-7-1899. <i>Rep.</i> ; Act 11 of 1923 and Burma Act 11 of 1922.
1904	Act XV	The Indian Stamp (Amendment) Act, 1904	<i>Rep.</i> ; Act 1 of 1938.
1906	Act V	The Indian Stamp (Amendment) Act, 1906	<i>Rep.</i> ; Act 1 of 1938.
1910	Act VI	The Indian Stamp (Amendment) Act, 1910	<i>Rep.</i> ; Act 1 of 1938.
1911	Beng. Act V	The Calcutta Improvement Act, 1911	Came into force on 21-1-1912.



Year	No. of Reg. or Act.	Name of Regulation or Act.	Particulars.
1912	Act I	The Indian Stamp (Amendment) Act, 1912	Rep.; Act 1 of 1938.
1914	Act IV	The Decentralisation Act, 1914	Rep.; Act 1 of 1938.
	Act X	The Repealing and Amending Act, 1914	Rep.; Act 1 of 1938.
1916	Act XIII	The Amending Act, 1916	Rep.; Act 1 of 1938.
1919	Act XVIII	The Repealing and Amending Act, 1919	Rep.; Act 1 of 1938.
1919	Mad. Act IV	Madras City Municipal Act, 1919	
1920	Mad. Act V	Madras District Municipalities Act, 1920	
1920	Mad. Act XIV	Madras Local Boards Act, 1920	
1922	Assam Act III	The Assam Stamp (Amendment) Act, 1922	Spent.
	Beng. Act III	The Bengal Stamp (Amendment) Act, 1922	Came into force on 1-4-1922.
1922	Bom. Act II	The Bombay Stamp (Amendment) Act, 1922	Spent.
	Mad. Act VI	The Madras Stamp (Amendment) Act, 1922	Came into force on 25-4-1922.
	Punj. Act VIII	The Punjab Stamp (Amendment) Act, 1922	Came into force on 15-1-1923.
1923	U. P. Act XII	The U. P. Board of Revenue Act, 1922	Rep.; Act 1 of 1938.
	Act XI	The Repealing and Amending Act, 1923	Rep.; Act 1 of 1938.
	Act XLIII	The Indian Stamp (Amendment) Act, 1923	Spent.
	C. P. Act II	The Central Provinces Stamp (Amendment) Act, 1923	
	Mad. Act VI	The Madras Stamp (Further Amendment) Act, 1923	Came into force on 20-3-1923.
	U. P. Act V	The United Provinces Stamp (Amendment) Act, 1923	Spent.
1924	Act XIII	The Indian (Specified Instruments) Stamp Act, 1924	Came into force on 13-6-1924.
	Punj. Act I	The Punjab Stamp (Amendment) Act, 1924	Came into force on 1-3-1925.
	U. P. Act II	The United Provinces Stamp (Second Amendment) Act, 1924	Spent.
1925	Act XV	The Indian Stamp (Amendment) Act, 1925	Rep.; Act 1 of 1938.
	Act XXXII	The Oudh Courts (Supplementary) Act, 1925	Rep.; Act 1 of 1938.
	Assam Act II	The Assam Stamp (Amendment) Act, 1925	Spent.
1926	Act XI	The Promissory Notes (Stamp) Act, 1926	Came into force on 2-3-1926.
	Act XXXVIII	The Indian Bar Councils Act, 1926	Came into force on 9-9-1926.
	Bom. Act I	The Indian Stamp (Bombay Amendment) Act, 1926	Spent.
	Bom. Act II	The Indian Stamp (Bombay Amendment) Act, 1926	Rep.; Bom. Act 2 of 1932.
1927	Act V	The Indian Finance Act, 1927	Rep.; Act 1 of 1938.
	Act X	The Repealing and Amending Act, 1927	Rep.; Act 1 of 1938.
	Bom. Act II	The Indian Stamp (Bombay Amendment) Act, 1927	Spent.
1928	Act XVIII	The Repealing and Amending Act, 1928	Rep.; Act 1 of 1938.
1929	Bom. Act I	The Indian Stamp (Bombay Amendment) Act, 1928	Spent.
	Burma Act XIII	The Indian Stamp (Burma Amendment) Act, 1928	
1929	Bom. Act I	The Indian Stamp (Bombay Amendment) Act, 1929	Spent.
1930	Act VIII	The Repealing and Amending Act, 1930	Rep.; Act 1 of 1938.
	Bom. Act I	The Indian Stamp (Bombay Amendment) Act, 1930	Spent.
	Bom. Act XVI	The Indian Stamp (Bombay Second Amendment) Act, 1930	Spent.
1931	Bom. Act II	The Indian Stamp (Bombay Amendment) Act, 1931	Spent.



Year	No. of Reg. or Act.	Name of Regulation or Act.	Particulars.
1932	Act XIV Bom. Act II	The Indian Air Force Act, 1932 The Bombay Finance Act, 1932	Came into force on 1-4-1932.
	Bom. Act VI	The Bombay Finance (Amendment) Act, 1932	Came into force on 5-11-1932.
	Burma Act II	The Indian Stamp (Burma Amendment) Act, 1932	
	Burma Act V	The Indian Stamp (Burma Second Amendment) Act, 1932	
	U. P. Act IV	The United Provinces Stamp (Amendment) Act, 1932	Spent.
1933	Bom. Act I Punj. Act I	The Bombay Finance (Amendment) Act, 1933 The Punjab Stamp (Amendment) Act, 1933	Spent. Came into force on 21-4-1933.
1934	Act XXXV Bom. Act I U. P. Act XI	The Amending Act, 1934 The Bombay Finance (Amendment) Act, 1934 The United Provinces Stamp (Amendment) Act, 1934	Rep.; Act 1 of 1938. Spent. Spent.
1935	Act VIII Beng. Act XII	The Central Provinces Courts (Supplementary) Act, 1935 The Indian Stamp (Bengal Amendment) Act, 1935	Rep.; Act 1 of 1938. Came into force on 1-6-1935.
1935—	Bom. Act I	The Bombay Finance (Amendment) Act, 1935	Came into force on 31-3-1935.
	Burma Act I	The Indian Stamp (Burma Amendment) Act, 1935	
	Burma Act V	The Indian Stamp (Burma Amendment) Act, 1935	
	Coorg Act II	The Coorg Stamp (Amendment) Act, 1935	Came into force on 3-12-1935.
	Punj. Act I	The Punjab Stamp (Amendment) Act, 1935	Came into force on 6-5-1935.
1936	Assam Act XV Bom. Act III	The Assam Stamp (Amendment) Act, 1936 The Bombay Finance (Amendment) Act, 1936	Spent. Came into force on 31-3-1936
1936	C.P. Act XXXVI U. P. Act III	Nagpur Improvement Trust Act, 1936 The United Provinces Stamp (Amendment) Act, 1936	Came into force on 1-5-1936.
1937	....	The Government of India (Adaptation of Indian Laws) Order, 1937	Came into force on 1-4-1937.
	Bihar Act VI	The Bihar Stamp (Amendment) Act, 1937	Came into force on 1-1-1938.
1938	Beng. Act IV	The Bengal Expiring Laws Act, 1938	Came into force on 26-5-1938.
	Bihar Act IV	The Bihar Stamp (Amendment) Act, 1938	Came into force on 13-7-1938.
	Bom. Act VII	The Bombay Finance (Amendment) Act, 1938	Came into force on 31-3-1938.
	Burma Act IV	The Burma Finance Act, 1938	
	Sind Act I	The Bombay Finance (Sind Amendment) Act, 1938	Came into force on 31-3-1938.
	Sind Act XII	The Indian Stamp (Sind Amendment) Act, 1938	Came into force on 9-6-1938.
	U. P. Act XVIII	The United Provinces Stamp (Amendment) Act, 1938	Came into force on 13-2-1939.
1939	Beng. Act VII	The Indian Stamp (Bengal Amendment) Act, 1939	Came into force on 29-6-1939.
	Bom. Act IV	The Bombay Finance (Amendment) Act, 1939	Came into force on 31-3-1939.
	C. P. Act VI	The Central Provinces and Berar Indian Stamp (Amendment) Act, 1939	Came into force on 1-7-1939.



Year	No. of Reg. or Act.	Name of Regulation or Act.	Particulars.
1940	Bom. Act I	The Bombay Finance (Amendment) Act, 1940	Came into force on 31-3-1940.
	C. P. Act VII	The Central Provinces and Berar Indian Stamp Amendment (Extending) Act, 1940	Spent.
1941	Bom. Act IV	The Bombay Finance (Amendment) Act, 1941	Came into force on 31-3-1941.
	C. P. Act XIII	The Central Provinces and Berar Indian Stamp Amendment (Extending) Act, 1941	Spent.
	U. P. Act VII	The Indian Stamp (United Provinces Amendment) Act, 1941	Came into force on 26-6-1941.
1942	Bom. Act VI	The Bombay Finance (Amendment) Act, 1942	Came into force on 31-3-1942.
	C. P. Act IX	The Central Provinces and Berar Indian Stamp Amendment (Extending and Amending) Act, 1942	Came into force on 26-6-1942.
1943	Bihar Act X	The Bihar Stamp (War Surcharge Amendment) Act 1943	Came into force on 6-12-1943.
	Bom. Act III	The Bombay Finance (Amendment) Act, 1943	Came into force on 31-3-1943.
	Bom. Act XIV	The Bombay Increase of Stamp Duties Act, 1943	Came into force on 1-1-1944.
	C. P. Act IV	The Central Provinces and Berar Indian Stamp Amendment (Extending) Act, 1943	Came into force on 25-6-1943.
1943	Mad. Act XVI	The Madras Stamp (Increase of Duties) Act, 1943	Came into force on 1-10-1943.
1943	Orissa Act VI	The Orissa Stamp (Amendment) Act, 1943	Came into force on 26-4-1943.
	Sind Act II	The Bombay Finance (Sind Amendment) Act, 1943	Came into force on 1-4-1943.
	U. P. Act IX	The Indian Stamp (United Provinces Amendment) Act, 1943	Came into force on 1-8-1943.
1944	Bom. Act IV	The Bombay Finance (Amendment) Act, 1944	Came into force on 31-3-1944.
	Bom. Act XIX	The Bombay Increase of Stamp Duties (Amendment) Act, 1944	Came into force on 1-1-1945.
	C. P. Act I	The Central Provinces and Berar Finance (Annual) Act, 1944.	Spent.
1945	Bom. Act XVII	Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945	
1945	C. P. Act V	The Central Provinces and Berar Finance (Annual) Act, 1945	Came into force on 1-4-1945.
	Orissa Act II	The Orissa Stamp (Surcharge Amendment) Act, 1945	Came into force on 1-7-1945.
1946	C. P. & Berar Act III	C. P. and Berar Finance (Annual) Act, 1946	Came into force on 1-4-1946.
1947	Bom. Act VIII	Bombay Finance (Amendment) Act, 1947	Came into force on 31-3-1947.
1947	C.P. & Berar III	C. P. and Berar Finance (Annual) Act, 1947	Ceased to be in force.
1948	Bihar Act XXV	Bihar Entertainments Duty, Court-fees and Stamps (Surcharge Amendment) Act, 1948	Came into force on 1-4-1948.
1948	Bom. Act XII	Bombay Increase of Stamp Duties (Repeal and Re-enactment) Act, 1948	Came into force on 24-3-1948.
1948	Bom. Act XXIII	Bombay Finance (Amendment) Act, 1948	Came into force on 31-3-1948.
1948	C.P. & Berar V	C. P. and Berar Indian Stamp (Amendment) Act, 1947	Came into force on 30-1-1948.
1948	C. P. & Berar VI	C. P. and Berar Indian Stamp (Amendment) Act, 1948	Came into force on 31-3-1948.
1948	C.P. & Berar Act LVIII	City of Jubbulpore (Improvement Duty) Act, 1948	Came into force on 8-10-1948.



Year.	No. of Reg. or Act.	Name of Regulation or Act.	Particulars.
1948	East Beng. Ord. II	Stamp Duty (Extension to Sylhet) Ordinance, 1948	Came into force on 28-1-1948.
1948	East Beng. Act XII	East Bengal Ordinances Temporary Enactment and Re-enactment Act, 1948	Came into force on 16-3-1948.
1948	U.P. Act XVII	United Provinces Stamp (Amendment) Act, 1948	Came into force on 1-4-1948.
1948	West Punj. Act XIV	Indian Stamp (West Punjab Amendment) Act, 1948	Came into force on 1-8-1948.
1949	Bom. Act II	Bombay Finance (Amendment) Act, 1949	Came into force on 1-4-1949.
1949	East Beng. Act IX	Indian Stamp (East Bengal Amendment) Act, 1949	Came into force on 21-7-1949.
1949	East Beng. Act XII	Stamp Duty (Extension to Sylhet) Act, 1949	Came into force on 6-8-1949.
1949	East Punjab Act XXVII	Indian Stamp (East Punjab Amendment) Act, 1949.	
1949	Orissa Act V	Orissa Stamp (Temporary Amendment) Act, 1949	Came into force on 22-5-1949.
1949	Sind Act V	—This Act is to remain in force for one year only. Sind Finance Act, 1949	Came into force on 1-4-1949.
1949	West Punj. Act XI	Indian Stamp (West Punjab Second Amendment) Act, 1949.	Came into force on 1-8-1948.

## COMPARATIVE TABLE

### (A) Sections.

Act II of 1899	Act I of 1879	Act XVIII of 1869	Act X of 1862	Act XXXVI of 1860	English Acts	
					(1870) 33&34 Vict. c. 97	(1891) 54&55 Vict. c. 39
1	1	57	42			
2 (1)	3 (1)	..	..	..	45	29
2 (2)	3 (2)	3 (3)	56	41	48	32
2 (3)	..	..	..	..	..	..
2 (4)	3 (3)	3 (4)	..	..	..	..
2 (5)	3 (4)	3 (5)	..	..	..	..
2 (6)	3 (5)	..	..	..	..	..
2 (7)	3 (6)	3 (8)	..	..	..	..
2 (9)	3 (8)	3 (9)	..	..	..	..
2 (10)	3 (9)	3 (11)	..	..	..	..
2 (11)	3 (10)	..	..	..	70	54
2 (12)	..	..	..	..	..	..
2 (12A)	..	..	..	..	2 (7)	122(1), para 6
2 (13)	..	3 (14)	..	..	..	..
2 (14)	..	..	..	..	..	..
2 (15)	3 (11)	3 (22)	..	..	2 (4)	122(1), para 3
2 (16)	3 (12)	3 (15)	..	..	..	..
2 (16A)	..	..	..	..	..	..
2 (17)	3 (13)	3 (18)	..	..	2 (10)	122(1), para 9
2 (18)	3 (14)	3 (21)	56	..	105	86
2 (19)	3 (15) paras 1 and 2	3 (23)	..	..	2 (2)	122(1), para 2
2 (20)	3 (15), paras 3 and 4	..	..	..	117 (1)	91, 98
					..	92



Act II of 1899	Act I of 1879	Act XVIII of 1869	Act X of 1862	Act XXXVI of 1860	English Acts	
					(1870) 33&34 Vict. c. 97	(1891) 54&55 Vict. c. 39
2 (21)	3 (16)	3 (24)	..	..	..	..
2 (22)	..	3 (25)	..	..	49	33
2 (23)	3 (17)	..	..	..	120	101
2 (24)	3 (19)	3 (32)	..	..	..	..
2 (25)	..	..	..	..	..	..
3	5	4, 7, 8	2, 9, 10	2, 7, 8	..	..
4	6	13	Sch.A,Art. 66 General Ex- emptions Note (b)	Sch.A,Art. 19	76, 77 (2)	58 (3), 61 (2)
5	7, para 1	14, Proviso	..	..	8 (1)	(4)(a)
6	7, para 2	14	..	..	..	..
7	7A	..	..	..	..	93, 94
8	7B	..	..	..	..	..
9	8	16	33	18	..	..
10	9	5 (b), 49, 50	4, 7	4	6 (1)	..
11	10	5 (a)	5, 6	5	..	..
12	11	31, 33	8, 11	6, 9	24 (1)	8 (1)
13	12	..	..	..	7 (1)	3 (1)
14	13	..	..	..	..	..
15	14	..	..	..	..	..
16	15	Sch.II,Art.16, Proviso.	Sch.A,Art.3, Proviso,Art. 37	..	14	11
17	16	28	18	13 (6)	..	..
18	17	24 (c)	..	..	15 (2) (a)	15 (3) (a)
19	18	8, 31	11	9	51	35
20	19, 20	10	..	..	11	6 (1)
21	21	..	..	..	12	6 (1)
22	22	..	..	..	13	6 (2)
23	23	9	..	..	..	..
23A	..	..	..	..	..	..
24	24	34 (b)	..	..	..	23
25	25	12	Sch.A,Art. 24	..	73	57
26	26	11	27	14	72	56
27	27	34 (a)	51 (1)	35	10	5
28	28	..	..	..	74	58
29(g)	29	6	..	..	..	..
30	58	27 (a)	29	15	..	..
31	30	39	19	..	18 (1), 18(3)	12 (1), 12 (2)
32	31	39	19	..	18(2),(3),(4), (5)	12 (6) (c). 12 (3),(4),(5), 6(a), 6(b)
33	33	22, 23	..	..	..	..
34	..	..	..	..	..	..
35	34, para 1 & Provisos 1 & 2	18, 19, 20, 28 Sch.II, Art.11	14, 15, 17, 22 Sch. A, Art. 1	12, 13	16(1),17,54(1)	14, 15
36	34, proviso 3	..	..	..	..	..
37	..	..	..	..	..	..
38	35	21, 22, 23	17 (2)	13 (5)	16(2)	14 (2)
39	36	..	..	..	..	..
40	37	24, 28	15, 22	13	..	..
41	38	24 (b), 28	15 (1)	13 (1)	..	..
42	39	20, 25	16	13 (5)	16 (3)	14 (3)
43	40	22, 24	..	..	..	..
44	41	..	..	..	..	..
45	42	42	15 (6)	13 (3)	15 (2) (b)	15 (3) (b)
46	43	25	21	13 (8)	..	..



Act II of 1899	Act I of 1879	Act XVIII of 1869	Act X of 1862	Act XXXVI of 1860	English Acts	
					(1870) 33 & 34 Vict. c.97	(1891) 54 & 55 Vict. c. 39
47	44	26	24	..	54 (2), (3)	38 (2), (3)
48	..	..	..	..	..	..
49	51	45, 46	50 (1), (2)	32 (1), (2)	..	..
50	51 Provisos.	..	..	..	..	..
51	..	..	..	..	..	..
52	52	..	..	..	..	..
53	53	45	50 (3)	..	..	..
54	54	45	..	..	..	..
55	..	..	..	..	..	..
56	45	40	15 (5), 35	13 (3)	..	..
57	46	41 (a), (b)	..	..	19 (1), (2)	13 (1), (2)
58	47	41 (c)	..	..	..	..
59	48	41 (d)	..	..	19(3), (4),(5)	13(3), (4),(5)
60	49	..	..	..	..	..
61	50	..	..	..	..	..
62	61	29, 30	3, 11, 23	3, 9	54(1), 102(3), 127	38(1), 80(3), 107
63	62	31, 33	8, 11	6, 9	24 (2)	8 (3)
64	63	34(c), 35	51	35, 36	10	5
65	64	27 (b)	29	15	123	103
66	65	..	..	..	118	97, 100
67	66	32	12, 25	10	..	..
68	67	..	13	11	..	..
69	68	48, para 3	48	31	..	..
70	69	43	52	37	..	..
71	70	44	53	38, 39	..	..
72	71	..	..	..	..	..
73	..	..	..	..	21 (1)	16
74	55	48, para 1	36	19	..	..
75	56	..	..	..	..	..
76	57, para 2	48, para 2	..	..	..	..
76A	..	..	..	..	..	..
77	59	17	..	..	..	..
78	60	51	37	..	..	..

## (B) Articles.

Act II of 1899	Act I of 1879	Act XVIII of 1869	Act X of 1862	Act XXXVI of 1860
Sch. I	Sch. I	Sch. I & II	Sch. A	Sch. A
1	1	II—Art. 5	..	..
2	2	..	..	..
3	38	II—Art. 31	..	..
4	3	II—Art. 14	Art. 8	Art. 2
5	5	II—Arts. 3, 11	Arts. 1, 2, 4 to 7	Arts. 1, 28
6	29	II—Art. 21	Arts. 13, 46, 47	Arts. 36, 41
7	6	II—Art. 35	..	..
8	7	I—Art. 21	..	..
9	31	..	..	..
10	8	II—Art. 33	..	..
11	9	II—Art. 41	..	..
12	10	I—Art. 22	..	..

a. See (1870) 33 & 34 Vict., C. 97, S. 39 and (1891) 54 & 55 Vict. C. 39, S. 25.



Act II of 1899	Act I of 1879	Act XVIII of 1869	Act X of 1862	Act XXXVI of 8160
13	11	I—Art. 1 } II—Art. 1 }	Art. 10	Arts. 4, 5
14	12	II—Art. 9	Art. 11	Art. 6
15	13	I—Art. 5	Arts. 12, 15 to 19	Arts. 8, 10, to 12, 14
16	15	I—Art. 6	Art. 14	Art. 9
17	..	..	..	..
19	16	..	..	..
19	17	II—Art. 4	Art. 20	..
20	18	II—Art. 22	Arts. 21, 6	Art. 16
22	20	II—Art. 28	Art. 22	Art. 17
Sch. I	Sch. I	Sch. I & II	Sch. A	Sch. A
23	21	I—Art. 15	Arts. 23, 24, 25	Arts. 7, 19
24	22	I—Art. 23	Arts. 28 to 32	Arts. 21 to 24
25	23	II—Art. 16	Arts. 33, 37	Art. 33
26	24	I—Art. 8	..	..
27	..	..	..	..
a28	26	..	..	..
29	34	..	..	..
30	27	..	..	..
31	35	I—Art. 18	Art. 38	Art. 27
32	30	I—Arts. 11, 17	..	..
33	36	II—Art. 37	Art. 35	Art. 25
34	28	I—Art. 9	..	..
35	4, 39	I—Art. 19	Arts. 3, 39 to 42	Arts. 29 to 32
36	40	..	..	..
37	41	II—Art. 2	Art. 10	Art. 4
38	42	II—Art. 29	Art. 45	Art. 35
39	43	II—Art. 34	..	..
40	44	I—Arts. 10, 16; II—Art. 20	Arts. 46 to 50	Arts. 7, 36, 39 to 41
41	..	..	..	..
42	45	II—Art. 23	Art. 53	Art. 46
43	46	..	..	..
44	47	II—Art. 12	Art. 60	..
45	37	I—Art. 18; II—Art. 39	Art. 54	Art. 42
46	32, 33	II—Art. 26	Art. 27	Art. 20
47	49	I—Art. 3	Arts. 55, 56	Arts. 43, 44
48	50	II—Arts. 13, 18, 19, 32	Arts. 43, 44	Art. 34
49	11	I—Art. 2; II—Art. 1	Arts. 10, 57	Arts. 4, 5, 45
50	45	II—Art. 24	Art. 58	Art. 46
51	45	II—Art. 25	Art. 59	Art. 46
52	51	II—Art. 8	..	..
53	52	II—Art. 7	Art. 61	Art. 47
54	53	II—Art. 27	Art. 51	Art. 37
55	54	II—Art. 30	Arts. 52, 62	Art. 38
56	55	I—Art. 7	Art. 14	Art. 9
57	14	I—Art. 12	Art. 18	Art. 13
58	57	I—Art. 14	Art. 64	Art. 49
59	..	..	..	..
60	58	II—Art. 6	Art. 65	..
61	59	I—Art. 20	..	..
62	60	I—Arts. 4, 13	Arts. 9, 26	Arts. 3, 19
63	60A	..	..	..
64	25, 56	II—Art. 36	..	..
b65	61	II—Art. 10	Art. 66	..

a. See (1870) 33 & 34 Vict., C. 97, S. 87 and (1891) 54 & 55 Vict. C. 39, S. 69.

b. See (1870) 33 & 34 Vict., C. 97, S. 88 and (1891) 54 & 55 Vict. C. 39, S. 111.



[illegible]



# THE INDIAN STAMP ACT, 1899

## ACT No. II OF 1899<sup>a</sup>

[27th January 1899.]

### AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO STAMPS.

WHEREAS it is expedient to consolidate and amend the law relating to Stamps ;  
It is hereby enacted as follows :—

#### Synopsis

- |  |   |
|--|---|
| 1. General rules of interpretation of statutes.                                | 25. Determination of nature of instrument for purposes of stamp duty. See Note 12 on Section 3. |
| 2. Proceedings in Legislative Council, reference to, in interpreting statutes. | 26. Stamp duty is payable on instrument and not on transaction.                                 |
| 3. English law—Reference to.   | 27. Alteration of document. See Note 2 on S. 14.  |
| 4. Title of Act.   | 28. Invalid document—Whether liable to stamp duty. See Section 3, Note 4.                       |
| 5. Preamble—Effect of, in construing enactments.                               | 29. Instruments executed outside British India—Applicability of Act. See Section 3.             |
| 6. Headings.   | 29a. Classification of duties.  |
| 7. Marginal notes.   | 29b. Ad valorem and fixed duties. See Note 29a.   |
| 8. Punctuation marks.  | 30. Calculation of ad valorem duties—Rules as to.   |
| 9. Illustrations.  | 31. Instrument not duly stamped.—Effect. See Section 35 and Notes thereon.                      |
| 9a. “May” meaning of.  | 32. Instrument not duly stamped—Suit on original cause of action. See Note 12 on S. 35.         |
| 9b. “Includes.” See Notes on Section 2.  | 33. Impounding of instruments not duly stamped. See S. 33 and Notes thereon.                    |
| 10. Exemption, provisions as to. See Note 11.                                  | 34. Evasion of stamp duty.  |
| 11. Proviso.   | 35. Presumption as to sufficiency of stamp duty.  |
| 12. Change in accepted mode of interpretation—Effect.                          | 36. Variation of terms by subsequent instruments. See Note 3 on Section 14.                     |
| 13. Conflicting provisions in statutes.  | 37. Kinds of stamps. See Section 10 and Notes thereon.  |
| 14. Repealing Act—Effect of.   | 38. Act applicable in determining duty or penalty payable.                                      |
| 15. Retrospective operation.   | 39. Stamp Act and Registration Act.   |
| 16. Interpretation of fiscal statutes.   | 40. Stamp Act and Court-fees Act. See Note 41.  |
| 16a. History of Stamp legislation in India.                                    | 41. Judicial and non-judicial stamps.   |
| 17. Construction of Stamp Act.   | 42. English Acts.   |
| 17a. Objections relating to stamp.   |   |
| 18. Reference to English law in construing the Act.                            |   |
| 19. Previous Acts—Reference to.  |   |
| 19a. Acts in pari materia.   |   |
| 20. Scope and object of Act.   |   |
| 21. Territorial application of Act. See Section I, Note 2.                     |   |
| 22. “Consolidate and amend.”   |   |
| 23. Instruments liable to stamp duty.  |   |
| 24. Wills—Liability to stamp duty. See Section 3, Note 8.                      |   |
| 24a. Exemption from stamp duty. See Note 10 on Section 3.                      |   |

a. For Statement of Objects and Reasons, *see* page 63; for Report of the Select Committee, *see* page 66; and for Proceedings in Council, *see* Gazette of India 1898 Pt. VI, pp. 10 and 278; and *ibid*, 1899, Pt. VI, page 5.

For the application of this Act to

States merged in the Bombay Presidency, *see* Indian States (Application of Laws) Order, 1948 and Kolhapur State (Application of Laws) Order, 1949.

States merged in the Central Provinces, *see* Central Provinces States (Application of Laws) Order, 1948 (19 of 1948).

State of Pudukkottai, *see* Fort St. George Gazette, Part I-Extraordinary, dated 6-8-1948.

State of Banganapalle, *see* Fort St. George Gazette, Part I-Extraordinary, dated 16-11-1948.

Himachal Pradesh, *see* Himachal Pradesh (Application of Laws) Order, 1948.



1. **General rules of interpretation of statutes.**—A statute is the expression of the will of the Legislature ; and the fundamental rule of interpretation of statutes, to which all others are subordinate, is that a statute is to be expounded “according to the intent of them that made it.” The intention of the Legislature should be gathered from the language employed by it.<sup>1</sup> Where the words of a statute are clear and unambiguous, it is the duty of the Court to give effect to them according to their plain meaning,<sup>3</sup> neither adding to nor subtracting from them.<sup>4</sup> The Court’s function is to interpret the law and not to enact or make the law. Its duty is to abide by the words of a statute without attempting to reform it according to the supposed intention of the Legislature.<sup>5</sup>

Every part of a statute must be given its full meaning and effect.<sup>6</sup> The ordinary and grammatical sense of the words is to be adhered to unless it would lead to some repugnance or inconsistency.<sup>7</sup>

#### Preamble—NOTE 1

1. Maxwell, *Interpretation of Statutes*, Fifth Edition, page 1.

2. (1847) 1 H L C 1 (4) : 9 E R 649 : 73 R R 1, *Fordyce v. Bridges*. (Intention not to be gathered from any general inferences to be drawn from the nature of the objects dealt with by the statute.)

(1850) 13 Beav 22 (29) : 51 E R 9 : 20 L J Ch 347 : 17 L T (O S) 306, *Logan v. Courtown (Earl)*.

3. ('29) 16 AIR 1929 All 625 (641) : 52 All 11 : 118 Ind Cas 17 (FB), *Kayastha Co. Ltd. v. Sitaram Dubey*.

('81) 7 Cal 127 (132) : 8 Cal L R 409 (DB), *Gureebullah Sircar v. Mohn Lall Shaha*.

('35) 22 AIR 1935 All 723 (725) : 58 All 191 : 157 Ind Cas 150 (FB), *Shiam Sunder Lal v. Mt. Savitri Kunwar*.

4. ('33) 20 AIR 1933 Nag 193 (199) : 29 Nag L R 278 : 143 Ind Cas 514 (FB), *Vithoba Chimnaji v. Govindrao Vithalrao*.

('30) 17 AIR 1930 Nag 73 (76, 77) : 123 Ind Cas 417 (DB), *Noksing v. Bholusingh*.

('33) 20 AIR 1933 All 321 (322) : 55 All 468 : 143 Ind Cas 486 (FB), *Ram Swarup v. Joti*.

('29) 16 AIR 1929 All 625 (641) : 52 All 11 : 118 Ind Cas 17 (FB), *Kayastha Co., Ltd. v. Sitaram Dubey*.

('17) 4 AIR 1917 All 295 (296) : 39 Ind Cas 87 (DB), *Damodar Das v. Jhao Singh*.

('14) 1 AIR 1914 Mad 502 (504) : 37 Mad 113 : 16 Ind Cas 947 (DB), *Secy. of State v. Kalekhan*. (It is not within the province of a Court of justice to introduce an exception where the rule enacted by the Legislature is universal in its terms.)

5. ('30) 17 AIR 1930 Sind 287 (293) : 25 Sind L R 142 : 127 Ind Cas 690 (DB), *Daily Gazette Press Ltd. v. Karachi Municipality*.

('93) 17 Bom 573 (577, 578) (DB), *Queen-Empress v. Balkrishna Vithal*.

('32) 19 AIR 1932 Mad 612 (619) : 55 Mad 883 : 140 Ind Cas 331 (FB), *Rajah of Mandasa v. Jaganayakalu*.

(1895) 1895 App Cas 202 (215) : 64 L J P O 70 : 72 L T 163, *Brophy v. Attorney-General of Manitoba*.

('30) 17 AIR 1930 Cal 770 (773) : 58 Cal 521 : 130 Ind Cas 283 (DB), *J. C. Mukherjea v. Karnani Industrial Bank Ltd.* (The duty of Court is not to put a construction which seems to the Court to be best in the sense that it will work out with the most justice or with the least inconvenience, but to put a construction which seems to the Court to be the best in the sense that it is nearest to the language of the Legislature.)

6. ('35) 22 AIR 1935 All 723 (725) : 58 All 191 : 157 Ind Cas 150 (FB), *Shiam Sunder Lal v. Mt. Savitri Kunwar*.

('04) 26 All 393 (405) : 7 Oudh Cas 248 : 31 Ind App 132 (PC), *Balraj Kunwar v. Jagatpal Singh*.

('28) 15 AIR 1928 Sind 118 (119) : 22 Sind L R 441 : 108 Ind Cas 657, *Vasanbai v. Radhibai*. (A statute ought to be so construed that if it can be prevented no clause, sentence or word shall be superfluous, void or insignificant.)

('33) 20 AIR 1933 All 321 (324) : 55 All 468 : 143 Ind Cas 486 (FB), *Ram Swarup v. Joti*. (One should, if possible, make sense of a statute and should not reject any expression as meaningless—“*Ut res magis valiat quam pereat*.”)

[See also ('33) 20 AIR 1933 Nag 193 (197) : 29 Nag L R 278 : 143 Ind Cas 514 (FB), *Vithoba Chimnaji v. Govindrao Vithalrao*. (It is the duty of the Courts of justice to try to get at the real intention of the Legislature by considering the whole scope of the statute to be construed.—AIR 1916 Cal 136 : 43 Cal 790 relied on.)]

7. ('21) 8 AIR 1921 Cal 397 (399) : 48 Cal 556 : 61 Ind Cas 82 (FB), *Nilmani Kar v. Raja Sati Prasad*.

('28) 15 AIR 1928 Lah 609 (613) : 9 Lah 701 : 111 Ind Cas 175 (FB), *Khan Gul v. Lakha Singh*.

(1907) 1 K B 462 (475) : 76 L J K B 212 : 96 L T 267, *General Council of the Bar (England) v. Inland Revenue Commissioners*.



Further, words must be given their broad, popular meaning and not any narrow, technical connotation.<sup>7a</sup> This expression "popular meaning" has been explained as being the meaning which the people conversant with the subject attribute to the words.<sup>7b</sup>

Where the Legislature uses words which have a definite legal meaning, i.e., a technical meaning in law, the Legislature must be presumed to have used the words in such a sense unless the contrary manifestly appears from the statute.<sup>8</sup> Similarly, technical expressions in statutes relating to technical subjects must be interpreted in a technical sense.<sup>8a</sup>

Where the language of a statute is not only plain but admits of only one meaning a Court is not entitled to depart from the plain language merely because the result of such a construction is absurd or mischievous,<sup>9</sup> or anomalous,<sup>10</sup> or it leads to hardship,<sup>11</sup> or injustice.<sup>12</sup> Similarly, the interpretation, in such cases, should not be influenced by extraneous considerations such as the previous state of the law,<sup>13</sup> or English law,<sup>14</sup> or the policy or intention of the law.<sup>15</sup> Where, however, the language

7a. ('76) 1 Ex D 242 (248): 45 L J Ex 465: 34 L T 426: 24 W R (Eng) 582, *Grenfell v. Inland Revenue Commissioners*.

('82) 5 All 121 (136, 137): 1882 All W N 128 (FB), *Gopal Pandey v. Parsotam Das*. (Per Mahomed, J.)

(1831) 1 Cr & J 434 (444): 148 E R 1492 (1496), *R. v. Winstanley*. (Lord Tenterden—Where we are to put a construction upon an Act of Parliament which does not relate or profess to relate to some particular subject of art or science, we should understand the words in the Act in the same way as they are understood in the common language of mankind.)

('68) 1868 Beng L R (Sup) Vol 985 (991): 9 Suth W R 402 (FB), *Huro Chunder Roy v. Sooradhonee Debia*. (Peacock, C. J.—A Judge ought not to fritter away the law by construing words according to a mere technical sense, instead of giving them a broad meaning so as to embrace all cases intended by the Legislature to be provided for.)

7b. (1876) 1 Ex D 242 (248): 45 L J Ex 465: 34 L T 426: 24 W R (Eng) 582, *Grenfell v. Inland Revenue Commissioners* (Per Pollock, B.)

8. (1847) 16 M & W 307 (309): 16 L J Ex 85: 153 E R 1206: 8 L T (O S) 367: 73. R R 512, *Burton v. Reeve*.

('82) 5 All 121 (136, 137): 1882 All W N 128 (FB), *Gopal Pandey v. Parsotam Das*. (The reason of the rule is that such language is employed for the purpose of escaping the difficulties caused by the use of merely popular expressions in regard to matters precise and technical in their nature, such as the title to land or the vesting of estates or other legal subjects—Per Mahmood, J., quoting Wilberforce on Statute Law, page 124.)

8a. See Maxwell, *Interpretation of Statutes*, Fifth Edition, p. 88. (In dealing with matters relating to the general public, statutes are presumed to use words in their popular sense, *uti loquitur vulgus*. But when deal-

ing with particular business or transactions words are presumed to be used with the particular meaning in which they are used and understood in the particular business in question.)

9. ('33) 20 AIR 1933 Pesh 3 (5): 141 Ind Cas 881, *Public Prosecutor, Peshawar Division v. Sh. Mugarab*.

('31) 18 AIR 1931 Lah 87 (92): 12 Lah 129: 131 Ind Cas 81 (FB), *Mahomed Hayat v. Commissioner of Income-tax*.

10. ('28) 15 AIR 1928 Lah 325 (329): 9 Lah. 649: 110 Ind Cas 164 (DB), *Dial Singh v. Gurdwara Sri Akal Takht*.

11. ('35) 22 AIR 1935 All 723 (725): 58 All 191: 157 Ind Cas 150 (FB), *Shiam Sunder Lal v. Mt. Savitri Kunwar*.

('90) 12 All 129 (137): 1890 All W N 39 (FB), *Bal Karan Rai v. Gobind Nath*.

12. ('31) 18 AIR 1931 Cal 688 (690): 58 Cal 510: 133 Ind Cas 587, *Ashutosh Basu v. Sudhangshubhushan Mukherji*.

13. ('21) 8 AIR 1921 Cal 397 (399): 48 Cal 556: 61 Ind Cas 82 (FB), *Nilmani Kar v. Raja Sati Prosad*. (Rule applies to a codifying or amending statute.)

('28) 15 AIR 1928 Bom 35 (37): 52 Bom 88: 107 Ind Cas 257 (FB), *Ganpat Tukaram v. Sopana Tukaram*.

('30) 17 AIR 1930 Sind 287 (293): 25 Sind L R 142: 127 Ind Cas 690 (DB), *Daily Gazette Press Ltd., v. Karachi Municipality*.

Also see Note 11.

14. ('30) 17 AIR 1930 Sind 287 (293): 25 Sind L R 142: 127 Ind Cas 690 (DB), *Daily Gazette Press Ltd. v. Karachi Municipality*.

15. ('33) 20 AIR 1933 All 358 (362): 55 All 406: 142 Ind Cas 403 (DB), *Joti Prasad v. Amba Prasad*. (Reasons for enactment cannot be searched for by looking to the proceedings of the Legislature.)

(1866) 11 Moo Ind App 551 (604): 8 Suth W R P C 3 (PC), *Moonshee Buzloor Raheem v. Shamsoonissa Begum*.



of a statute is ambiguous and of doubtful import recourse may be had to such extraneous considerations.<sup>16</sup> Where the language is capable of more than one construction that construction which does not lead to absurd results but is in consonance with justice, reason and common-sense is to be adopted.<sup>17</sup> Similarly, that construction which will best carry out the intention of the Legislature as appears from the general scope of the legislation and surrounding circumstances is to be preferred.<sup>18</sup>

The same words are *prima facie* to be construed in the same sense in different parts of the same statute.<sup>19</sup>

Where a statute creates a right and prescribes a particular remedy for the infringement of that right that remedy and that remedy alone can be pursued by the person complaining of the infringement.<sup>20</sup>

Where the Legislature amends an Act, it must be taken to be aware of the interpretation placed by the Courts upon its enactment and if it finds that the interpretation by the Courts is not in conformity with its intention, it should amend the Act and bring it in conformity with its intention.<sup>21</sup>

Although there is a distinction between penal and remedial Acts, namely, that the one is to be construed strictly and the other liberally, yet the Court must always look for the true construction of the statute. In construing penal statutes, if there be a fair and reasonable doubt, the construction is to be favourable to the subject.<sup>22</sup>

2. Proceedings in Legislative Council, reference to, in interpreting statutes.—When the words of a statute are clear and unambiguous they must be given effect to; proceedings of the Legislature which resulted in the passing of the statute are not to be taken into consideration in such cases.<sup>1</sup> For, it is for the Legislature to

16. ('30) 17 AIR 1930 Sind 287 (293): 25 Sind L R 142: 127 Ind Cas 690 (DB), *Daily Gazette Press Ltd. v. Karachi Municipality*.  
(21) 8 AIR 1921 Cal 397 (399): 48 Cal 556: 61 Ind Cas 82 (FB), *Nilmani Kar v. Raja Sati Prasad*. (Reference to previous state of law is permissible).

17. ('31) 18 AIR 1931 Lah 353 (359): 12 Lah 604: 131 Ind Cas 625 (DB), *Kundanlal v. Emperor*.

(28) 15 AIR 1928 Mad 571 (577): 111 Ind Cas 225 (DB), *Mohideen Pichai v. Tinnevely Mills Co. Ltd.*

(28) 15 AIR 1928 Lah 609 (613): 9 Lah 701: 111 Ind Cas 175 (FB), *Khan Gul v. Lakha Singh*.

(28) 15 AIR 1928 Mad 746 (755): 114 Ind Cas 545 (DB), *Subramanya Ayyar v. Swaminatha Chettiar*.

18. (1895) 1895 App Cas 202 (216): 64 L J P O 70: 72 L T 163, *Brophy v. Attorney-General of Manitoba*.

(32) 19 AIR 1932 Cal 699 (700): 60 Cal 233: 142 Ind Cas 891 (DB), *Giribala Dasi v. Mader Gazi*.

(32) 19 AIR 1932 Bom 427 (428): 56 Bom 264: 138 Ind Cas 703 (DB), *Emperor v. G. G. Munshi*.

(33) 20 AIR 1933 Nag 193 (197): 29 Nag L R 278: 143 Ind Cas 514 (FB), *Vithoba v. Govindrao Vithalrao*. (Words of the statute when there is a doubt about their meaning are to be understood in the sense in which

they best harmonise with the subject of the enactment and the object which the Legislature has in view.)

19. ('28) 15 AIR 1928 Lah 609 (625): 9 Lah 701: 111 Ind Cas 175 (FB), *Khan Gul v. Lakha Singh*.

(28) 15 AIR 1928 Lah 325 (328): 9 Lah 649: 110 Ind Cas 164 (DB), *Dial Singh v. Gurdwara Sri Akal Takht*. (When a word or phrase is defined as having a particular meaning in an enactment, it is that meaning and that meaning alone which must be given to it, in interpreting a section of the Act, unless there be anything repugnant in the context.)

20. ('33) 20 AIR 1933 All 358 (361): 55 All 406: 142 Ind Cas 403 (DB), *Joti Prasad v. Amba Prasad*.

(28) 15 AIR 1928 Mad 571 (572, 573): 111 Ind Cas 225 (DB), *Mohideen Pichai v. Tinnevely Mills Co., Ltd.*

21. ('34) 21 AIR 1934 Pat 701 (703): 14 Pat 283: 155 Ind Cas 1099 (DB), *Sourendra Mohan Sinha v. Secretary of State*.

22. (1862) 158 E R 695 (699): 31 L J Ex 233: 10 W R (Eng) 304: 126 R R 720, *Nicholson v. Fields*.

#### Preamble—NOTE 2

1.\*('95) 22 Cal 788 (799): 22 Ind App 107 (PC) *Administrator General of Bengal v. Premlal, Mullick*.

(04) 31 Cal 628 (640): 8 Cal W N 578 (DB), *Sarat Sundari v. Uma Prasad*.



consider and determine whether the words employed by them will give effect to the object they had in view.<sup>2</sup> If, however, a provision is ambiguous and cannot be construed without some reference to outside sources, such proceedings may be looked into.<sup>3</sup> Opinions expressed by judicial personages who happen to be members of the Legislature, during debates in such Legislature, may be cited in the Court in the same way as text-books relating to the statute can be cited.<sup>4</sup>

**3. English law—Reference to.**—The decisions under English law are not precedents and are not binding as authority upon the Courts in India, not administering English law. It has also been pointed out by their Lordships of the Privy Council that where there is a positive enactment of the Indian Legislature, the proper course is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any considerations derived from the previous state of law or of the English law upon which it may be founded.<sup>1</sup> Where, however, an Indian statute has been passed *in the same terms and on the same lines* as those of an English statute and the latter statute has been authoritatively construed by English decisions, they may be usefully referred to as analogies.<sup>2</sup>

See also NOTE 16 on Preamble in A. I. R. Commentaries on the Civil Procedure Code, 4th (1944) Edition.

**4. Title of Act.**—The title of an Act is regarded as an important part of the Act and should be read together with the Preamble.<sup>1</sup> In *Fielding v. Morley Corporation*,<sup>1</sup> Findley, M. R., observed :

“I read the title advisedly, because now, and for some years past, the title of an Act of Parliament has been part of the Act. In old days, it used not to be so, and in the old law books we were told not so to regard it; but now the title is an important part of the Act, and is so treated in both Houses of Parliament.”

But when the language, object and the scope of the Act are not open to doubt,

(‘23) 10 AIR 1923 Cal 74 (78) : 72 Ind Cas 663 (DB), *Dina Nath Pal v. Raja Sati Prasad*.

(‘98) 22 Bom 112 (127, 128), *Queen Empress v. Bal Gangadhar Tilak*.

(‘28) 15 AIR 1928 Lah 35(38) : 9 Lah 260 : 104 Ind Cas 661 (DB), *Raj Mahal v. Harnam Singh*.

(‘33) 20 AIR 1933 All 358 (362) : 55 All 406 : 142 Ind Cas 403 (DB), *Joti Prasad v. Amba Prasad*.

2. (‘83) 5 All 121 (135) : 1882 All W N 128 (FB), *Gopal Pandey v. Pursotam Das*.

3. (‘35) 22 AIR 1935 Cal 304 (305) : 62 Cal 666 : 162 Ind Cas 910 (DB), *Superintendent and Remembrancer of Legal Affairs, Bengal v. Tarak Nath Chatterjee*.

[See also (1862) 6 L T 732 (733) : 10 W R (Eng) 790 : 31 L J Bcy 87, *In re Mew and Thorne*. (In the interpretation of statutes it is desirable first to consider the state of the law existing at the time of its introduction and then the complaints or the evils that were existing or were supposed to exist in that state of the law. Proceedings in Council may be referred to for the purpose of only putting the interpreter of the law in the position in which the Legislature itself was placed; and this is done properly for the purpose of gaining assistance in interpreting the words of the law, not that one will be

warranted in giving to those words any different meaning from that which is consistent with their plain and ordinary signification.)]

4. (1879) 4 Q B D 525 (576, 577), *Queen v. Bishop of Oxford*. (Thesiger, L. J., doubting.)

#### Preamble—NOTE 3

1. (‘28) 15 AIR 1928 P C 2 (4) : 55 Ind App. 18 : 7 Pat 221 : 107 Ind Cas 14 (PC), *Mt. Ramandi Kuer v. Mt. Kalawati Kuer*.

[See also (‘34) 21 AIR 1934 Lah 809 (811) : 16 Lah 392 : 155 Ind Cas 938 (DB), *Diwan Chand v. Manak Chand*. (AIR 1928 P C 2 : 7 Pat 221 : 55 Ind App 18 (PC) followed.)]

2. See (‘89) 16 Cal 432 (435) (DB), *Ramen Chetty v. Mahomed Ghose*. (The Stamp Act of 1879 in India ought to be construed according to the same principles of construction as the Stamp Act in England and the earlier Stamp Acts in this country.)

See also Note 18.

#### Preamble—NOTE 4

1. (‘27) 14 AIR 1927 Mad 85 (87) : 99 Ind Cas 143, *Balaji Singh v. Gangamma*.

(1899) 1 Ch 1 (4) : 67 L J Ch 611 : 79 L T 231 : 47 W R (Eng) 295, *Fielding v. Morley Corporation*.

1a. (1899) 1 Ch 1 (3, 4) : 67 L J Ch 611 : 79 L T 231 : 47 W R (Eng) 295.



the enacting part cannot be restricted, extended or modified by reference either to the title or preamble.<sup>2</sup>

But where the enacting part is ambiguous, the title and preamble of a statute may be relied upon as aids to the understanding of the meaning of the statute, or for determining the general object and intention of the Legislature in passing the enactment.<sup>3</sup> See also A.I.R. Commentaries on the Civil Procedure Code, 4th (1944) Edition, Preamble, NOTE 10.

**5. Preamble—Effect of, in construing enactments.**—In the interpretation of statutes, preambles supply a key to the mind of the Legislature,<sup>1</sup> their purpose being to indicate what in general terms was the object of the Legislature in passing the statute.<sup>2</sup> But it may well happen that these general terms will not necessarily indicate or cover all the matters which are provided for in the enacting portions of the statute.<sup>3</sup> In other words, a preamble is not always exhaustive.<sup>4</sup>

It is a settled rule of construction that where the language of the enacting sections of a statute is clear, the terms of a preamble cannot be called in aid to restrict their operation or to cut them down.<sup>5</sup> Where, however, their language is obscure or

2.† ('35) 22 AIR 1935 Pesh 69 (72) : 155 Ind Cas 1022 (DB), *Abdullah Khan v. Bahram Khan*.

3. ('35) 22 AIR 1935 Pesh 69 (72) : 155 Ind Cas 1022 (DB), *Abdullah Khan v. Bahram Khan*.

(1903) 1903 App Cas 443 (447) : 72 LJKB 787 : 89 L T 314 : 52 W R (Eng) 81, *Fenton v. Thorley and Co. Ltd.* (The title of an Act may be referred to for the purpose of ascertaining generally the scope of the Act.)

(1900) 82 L T 448 (449) : 48 W R (Eng) 518 : (1900) 1 Ch 749 : 69 L J Ch 331, *Attorney-General v. Margate Pier and Harbour Company of Proprietors*. (The title can be looked at in order to understand the meaning of an Act.)

('68) 1868 Beng L R (Sup) Vol 985 (988) : 9 Suth W R 402 (FB), *Huro Chunder Roy v. Sooradhonee Debia*. (Do.)

Preamble—NOTE 5

1. (1857) 7 Moo Ind App 72 (99) : 4 Suth W R (PC) 109 (PC), *Nga Hoong v. Queen*.

('36) 23 AIR 1936 All 507 (511) : 58 All 1041 : 163 Ind Cas 756 (FB), *Mt. Rajpali Kunwar v. Surju Rai*.

('31) 18 AIR 1931 All 597 (599) : 54 All 220 : 136 Ind Cas 274 (FB), *Durga Thathera v. Narain Thathera*.

('18) 5 AIR 1918 Pat 398 (408) : 3 Pat L Jour 1 : 44 Ind Cas 94 (FB), *Janki Singh v. Jagannath Das*.

2. ('89) 11 All 262 (266) : 1889 All W N 85, *Queen-Empress v. Indarjit*.

(1899) 1899 App Cas 143 (157) : 68 L J Q B 392 : 80 L T 538 : 47 W R (Eng) 585, *Powell v. Kempton Park Racecourse Co., Ltd.* (A preamble may afford useful light as to what a statute intends to reach.)

('36) 23 AIR 1936 All 507 (511) : 58 All 1041 : 163 Ind Cas 756 (FB), *Mt. Rajpali Kunwar v. Surju Rai*.

3. ('89) 11 All 262 (266) : 1889 All W N 85, *Queen-Empress v. Indarjit*.

4. ('35) 22 AIR 1935 Pesh 69 (72) : 155 Ind Cas 1022 (DB), *Abdullah Khan v. Bahram Khan*.

5. \*(1899) 1899 App Cas 143 (157) : 68 L J Q B 392 : 80 L T 538 : 47 W R (Eng) 585, *Powell v. Kempton Park Racecourse Co., Ltd.*

†('28) 15 AIR 1928 Lah 35 (38) : 9 Lah 260 : 104 Ind Cas 661 (DB), *Raj Mal v. Harnam Singh*. (English law considered.)

('89) 11 All 262 (266) : 1889 All W N 85, *Queen-Empress v. Indarjit*. (8 Suth W R (Cr) 69, dissented from.)

('43) 30 AIR 1943 Cal 285 (312) : 207 Ind Cas 481 (SB), *Benoari Lal Sarma v. Emperor*.

('42) 29 AIR 1942 Sind 65 (69) : ILR (1942) Kar 127 : 202 Ind Cas 405 (SB), *In re "New Sind"*. (An Act is not controlled by its preamble.)

('38) 25 AIR 1938 Nag 134 (141) : ILR (1938) Nag 115 : 174 Ind Cas 211 (FB), *Amrut v. Mt. Thagan*.

('38) 25 AIR 1938 Mad 441 (445) : ILR (1938) Mad 841 : 175 Ind Cas 401 (FB), *Manubolu Rangareddi v. Dasaradharami Reddi*. (A preamble does not govern the plain provisions in the body of the Act.)

('36) 23 AIR 1936 All 507 (511) : 58 All 1041 : 163 Ind Cas 756 (FB), *Mt. Rajpali Kunwar v. Surju Rai*. (Where the language of the section is clear, a preamble cannot control its provisions.)

('19) 6 AIR 1919 Cal 551 (560) : 45 Cal 343 : 44 Ind Cas 770 (FB), *Mani Lal Singh v. Trustees for the Improvement of Calcutta*.

('40) 27 AIR 1940 Oudh 138 (147) : 15 Luck 229 : 186 Ind Cas 753 (FB), *Dolsingar Singh v. Mt. Jainath Kuar*. (Preamble cannot be used to control the enactment itself.)

('35) 22 AIR 1935 Pesh 69 (72) : 155 Ind Cas 1022 (DB), *Abdullah Khan v. Bahram Khan*.

('83) 9 Cal 704 (710) : 10 Ind App 39 (PC), *Omrao Begum v. Government of India*.

('10) 6 Ind Cas 259 (261) (DB) (Cal), *Gopi Krishna v. Rajkrishna*.



ambiguous, the preamble may be referred to in order to determine the reasons and the object of the Legislature.<sup>6</sup>

See also A. I. R. Commentaries on the Civil Procedure Code, 4th (1944) Edition Preamble, NOTE 10.

**6. Headings.**—Headings are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself. They may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to to explain its enactments, but as affording a better key to the construction of sections which follow, than might be afforded by a mere preamble.<sup>1</sup> But a heading serves as a key and is of help in clearing up obscurities only where the main provisions of the sections, which occur under that heading or chapter, are ambiguously worded.<sup>2</sup> Where, however, the sections are unequivocal and clear, the headings cannot control the express provisions of the sections.<sup>3</sup> See also A. I. R. Commentaries on the Civil Procedure Code, 4th (1944) Edition. Preamble, NOTE 10.

**7. Marginal notes.**—Marginal notes to the sections of a statute are not taken as part of the statute<sup>1</sup> and cannot be referred to for the purpose of interpreting or

6. ('10) 6 Ind Cas 259 (261) (DB) (Cal), *Gopi Krishna v. Raj Krishna*.

('36) 23 AIR 1936 All 507 (511) : 58 All 1041 : 163 Ind Cas 756 (FB), *Mt. Rajpali Kunwar v. Sarju Rai*.

('19) 6 AIR 1919 Cal 551 (560) : 45 Cal 343 : 44 Ind Cas 770 (FB), *Mani Lall Singh v. Trustees for the Improvement of Calcutta*.

('32) 19 AIR 1932 Bom 427 (428) : 56 Bom 264 : 138 Ind Cas 703 (DB), *Emperor v. G. G. Munshi*.

('68) 1868 Beng LR (Sup Vol) 985 (988) : 9 Suth WR 402 (FB), *Hurro Chunder Roy v. Soorahdonee Debia*. (Per Peacock, C. J., in Order of Reference.)

† ('28) 15 AIR 1928 Lah 35 (38) : 9 Lah 260 : 104 Ind Cas 661 (DB), *Raj Mal v. Harnam Singh*.

('35) 22 AIR 1935 Pesh 69 (72) : 155 Ind Cas 1022 (DB), *Abdullah Khan v. Bahram Khan*.

(1860) 11 ER 639 (643) : 9 HLC 32 : 31 LJ Ex 73 : 3 LT 60 : 8 WR (Eng) 748 : 131 RR 17, *Eastern Counties, and London and Blackwell Rly. Companies v. Marriage*.

Preamble—NOTE 6

1. \* (1860) 11 ER 639 (643) : 31 LJ Ex 73 : 3 LT 60 : 8 WR (Eng) 748 : 9 HLC 32 : 131 RR 17, *Eastern Counties, and London and Blackwell Rly. Companies v. Marriage*. (1894) 63 LJ P 146 (157) : 71 LT 346 : (1894) App Cas 508, *Arrow Shipping Co. v. Tyne Improvement Commissioners*.

('18) 5 AIR 1918 Pat 398 (408, 409) : 3 Pat L Jour 1 : 44 Ind Cas 94 (FB), *Janki Singh v. Jagannath Das*. (Headings prefixed to sections or sets of sections have been frequently used for the purpose of interpreting the meaning, scope and intention of statutes.)

† ('31) 18 AIR 1931 All 597 (599) : 54 All 220 : 136 Ind Cas 274 (FB), *Durga Thathera v.*

*Narain Thathera*. (Mukerji, J., in Order of Reference—Contra.)

('32) 19 AIR 1932 Cal 346 (348) : 59 Cal 528 : 137 Ind Cas 469, *In re Ananda Lal Chakrabutty*.

2. ('10) 34 Bom 316 (319) : 5 Ind Cas 862 (DB), *In re Shivalal Palma*.

\* ('31) 18 AIR 1931 All 597 (599) : 54 All 220 : 136 Ind Cas 274 (FB), *Durga Thathera v. Narain Thathera*.

('33) 20 AIR 1933 Bom 417 (420) : 57 Bom 537 : 146 Ind Cas 248 (FB), *Emperor v. Ismail Sayadsaheb Mujawar*. (Headings of different portions of a statute can be referred to to determine the sense of any doubtful expression in a section arranged under any particular heading.)

3. † ('31) 18 AIR 1931 All 597 (599) : 54 All 220 : 136 Ind Cas 274 (FB), *Durga Thathera v. Narain Thathera*.

('32) 19 AIR 1932 Cal 346 (348) : 59 Cal 528 : 137 Ind Cas 469, *In re Anandalal Chakrabutty*.

('18) 5 AIR 1918 PC 20 (22) : 45 Ind App 125 : 42 Bom 462 : 48 Ind Cas 63 (PC), *Abdul Rahim Mahomed Narma v. The Municipal Commissioner for the City of Bombay*. [See also ('33) 20 AIR 1933 Cal 699 (700) : 60 Cal 936 : 147 Ind Cas 191 (DB), *Shadan-chandra v. Shewnarayan*.]

Preamble—NOTE 7

1. ('98) 25 Cal 858 (860, 862) : 2 Cal WN 577 (DB), *Punardeo v. Ram Sarup*.

[See also ('31) 18 AIR 1931 All 597 (599) : 54 All 220 : 136 Ind Cas 274 (FB), *Durga Thathera v. Narain Thathera*. (Per Mukerji, J., in the Order of Reference—Headings are no part of the enactment. They are on the same lines as the marginal notes to the sections or rules.)]



construing the statute.<sup>2</sup> In *Balraj Kunwar v. Jagatpal Singh*,<sup>3</sup> their Lordships of the Privy Council observed as follows:

"It is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake, and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the marginal notes in an English Act of Parliament."

According to the undermentioned cases,<sup>4</sup> however, when the marginal notes to the sections are inserted by or under the authority of or assented to, by the Legislature, they can be relied upon for the purposes of interpretation. It has also been held that where there is ambiguity in the section the marginal note to the section can be referred to for solving the ambiguity.<sup>5</sup>

See also A. I. R. Commentaries on the Civil Procedure Code, 4th (1944) Edition, Preamble NOTE 11, Halsbury's *Laws of England*, Vol. 27, page 121, and Maxwell's *Interpretation of Statutes*, 5th Edition, page 68.

**8. Punctuation marks.**—Before the year 1849, the English Acts of Parliament were not punctuated by any stops and the then accepted rule of interpretation was that such marks could not be relied upon in construing Acts of Parliament.<sup>1</sup> In *Maharani of Burdwan v. Krishna Kamini Dasi*,<sup>2</sup> which was a case under the Bengal Regulation, VIII of 1819, their Lordships of the Privy Council held that "it is an error to rely on punctuation in construing Acts of the Legislature."

Since the constitution of the regular Legislatures in India, however, the practice has been to insert stops in Bills before the Legislatures and to retain them in the authentic copies of the Acts signed by the Governor-General and published in the Gazette of India. In these circumstances, it was held by the High Court of Bombay,<sup>3</sup> that punctuation marks may be considered as aids to the interpretation of the statute *where the language thereof might otherwise be doubtful*. The High Court of Madras took the view that the marks were part of the statute and should be considered as such.<sup>4</sup> On the other hand, it was held by the High Courts of Allahabad<sup>5</sup> and Calcutta<sup>6</sup> following the case of *Maharani of Burdwan* that punctuation marks could not be taken into consideration in construing the statute.

2.†('98) 25 Cal 858 (860): 2 Cal W N 577 (DB), *Punardeo v. Ram Sarup*.

('19) 6 AIR 1919 Mad 514 (514): 42 Mad 451: 51 Ind Cas 46 (DB), *Kesava Chetty v. Secy. of State*.

('27) 14 AIR 1927 Mad 85 (87): 99 Ind Cas 143, *Balaji Singh v. Gangamma*. (Whatever may be the view with regard to certain Act of Parliament, in the case of Indian enactments the marginal notes are never the subject of discussion.)

3. ('04) 26 All 393 (406): 7 Oudh Cas 248: 31 Ind App 132 (PC).

4.†('29) 16 AIR 1929 All 53 (56, 58): 51 All 411: 113 Ind Cas 442 (FB), *Ram Saran v. Bhagwat Prasad*.

('33) 20 AIR 1933 Bom 417 (421): 57 Bom 537: 146 Ind Cas 248 (FB), *Emperor v. Ismail Sayadsaheb Mujawar*. (Per Rangnekar, J.—AIR 1929 All 53: 51 All 411 (FB), Rel. on).

('35) 22 AIR 1935 Cal 287 (289): 62 Cal 266: 155 Ind Cas 1003 (DB), *Abdul Hakim v. Fozu Mia*.

5. ('40) 27 AIR 1940 Bom 363 (364): ILR (1940) Bom 799: 191 Ind Cas 653 (DB), *Emperor v. Fulabhai Bhulabhai*.

Preamble—NOTE 8

1. ('15) 2 AIR 1915 Bom 50 (52): 39 Bom 182: 27 Ind Cas 494 (DB), *Blanche Somerset Taylor v. Charles George Bleach*.

2.\*('87) 14 Cal 365 (372): 14 Ind App 30 (PC).

3. ('15) 2 AIR 1915 Bom 50 (51, 52, 53): 39 Bom 182: 27 Ind Cas 494 (DB), *Blanche Somerset Taylor v. Charles George Bleach*.

4. ('24) 11 AIR 1924 Mad 455 (456): 79 Ind Cas 608 (DB), *Board of Revenue, Madras v. Ramanathan Chettiar*.

[See also ('14) 1 AIR 1914 Mad 502 (503): 37 Mad 113: 16 Ind Cas 947 (DB), *Secretary of State v. Kalekhan*.]

5. (1900) 22 All 270 (277): 1900 All W N 59 (FB), *Edward Caston v. L. H. Caston*.

6. ('19) 6 AIR 1919 Cal 551 (563): 45 Cal 343: 44 Ind Cas 770 (FB), *Mani Lal Singh v. Trustees for the Improvement of Calcutta*.



The question came again before the Privy Council in *Lewis Pugh v. Ashutosh Sen*,<sup>7</sup> a case under Arts. 48 and 49 of the Indian Limitation Act and it was held that a Court was *bound to read those articles without the commas inserted in the print*. This view as to the use of punctuation marks has now been followed by the High Courts of Allahabad<sup>8</sup> Bombay,<sup>9</sup> and Lahore.<sup>10</sup> In the undermentioned case,<sup>11</sup> however, the High Court of Calcutta has held that where it is not contended that the punctuation is wrongly placed, there is no reason why the punctuation should not be taken as a good guide for the purpose for which it is there, namely, to understand the sense of the passage.

**9. Illustrations.**—The views expressed as to whether the illustrations to a section are part of the section do not seem to be quite consistent. In some judgments, it has been said that unlike marginal notes, illustrations are a part of the statute.<sup>1</sup> But in others, they are said to be *not* a part of the statute.<sup>2</sup> But in spite of this, it is well settled that the Courts are justified in using them as a guide to the interpretation of the substantive provisions of the sections.<sup>3</sup> They, however, only serve to explain the meaning of the sections and cannot be allowed to control the plain meaning or to restrict the scope of the sections to which they are appended.<sup>4</sup> But as pointed out in *Mahomed Syedol Ariffin v. Yeoh Ooi Gark*<sup>5</sup>:

“It would require a very special case to warrant their rejection on the ground of their assumed repugnancy at the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired.”

See also A. I. R. Commentaries on the Civil Procedure Code, 4th (1944) Edition Preamble, NOTE 12.

**9a. “May,” meaning of.**—The word “may” in itself has only a permissive and not an obligatory sense. It is, however, *capable* of meaning “must” in certain

7.\*('29) 16 AIR 1929 P C 69 (71) : 8 Pat 516 : 56 Ind App 93 : 114 Ind Cas 604 (PC).

8. ('31) 18 AIR 1931 All 154 (156) : 53 All 374 : 129 Ind Cas 545 (DB), *Niaz Ahmad Khan v. Parsottam Chandra*.

('33) 20 AIR 1933 All 521 (522) : 55 All 700 : 145 Ind Cas 802, *Mansa v. Mt. Ancho*.

9. ('37) 24 AIR 1937 Bom 39 (41) : ILR (1937) Bom 763 : 166 Ind Cas 974, *Indian Cotton Co. Ltd. v. Hari Poonjoo*.

10. ('41) 28 AIR 1941 Lah 28 (30) : 193 Ind Cas 312 (DB), *Bhola Singh v. Raman Mal*.

11. ('36) 163 Ind Cas 573 (575) (Cal), *Birendra Lal v. Nagendra Nath*.

#### Preamble—NOTE 9

1.\*('18) 5 AIR 1918 P C 249 (250) : 1918 Pun Re No. 124 : 48 Ind Cas 1 (PC), *Lala Balla Mal v. Ahmad Shah*.

('37) 24 AIR 1937 Oudh 57 (60) : 13 Luck 1 : 164 Ind Cas 1025 (DB), *Sri Nath v. Kedar Nath Puri*.

('28) 15 AIR 1928 Oudh 15 (17) : 3 Luck 244 : 106 Ind Cas 213 (DB), *Ramlal v. Emperor*.

2.\*('16) 3 AIR 1916 P C 242 (244) : 43 Ind. App 256 : 39 Ind Cas 401 (PC), *Mahomed Syedol Ariffin v. Yeoh Ooi Gark*.

('77) 1 All 487 (495, 496) : 2 Ind Jur 420 (DB), *Nanak Ram v. Mohin Lal*.

('15) 2 AIR 1915 Lah 16 (50) : 1915 Pun Re No. 17 (Cr) : 28 Ind Cas 738 (DB), *Balmokand v. Emperor*.

3.\*('16) 3 AIR 1916 P C 242 (244) : 43 Ind App 256 : 39 Ind Cas 401 (PC), *Mahomed Syedol Ariffin v. Yeoh Ooi Gark*.

('28) 15 AIR 1928 Oudh 15 (17) : 3 Luck 244 : 106 Ind Cas 213 (DB), *Ramlal v. Emperor*.

4. ('05) 28 Mad 57 (61) : 14 Mad L Jour 209 (DB), *Govinda Pillai v. Thayammal*.

†('81) 7 Cal 132 (135) : 8 Cal L R 281 (DB), *Koylash Chunder v. Sonatun Chung*.

('15) 2 AIR 1915 Cal 594 (595) : 26 Ind Cas 485 (DB), *Ram Gopal v. Abhoya Charan*.

('15) 2 AIR 1915 Lah 16 (50) : 1915 Pun Re No. 17 (Cr) : 28 Ind Cas 738 (DB), *Balmokand v. Emperor*.

('77) 1 All 487 (495, 496) : 2 Ind Jur 420 (DB), *Nanak Ram v. Mohin Lal*.

('24) 11 AIR 1924 Bom 524 (525) : 49 Bom 73 : 84 Ind Cas 421 (DB), *Waman Martand v. Commissioner, Central Division*. (Case under Stamp Act, S. 24—Per Shah, Ag. C. J.)

('10) 5 Ind Cas 110 (113) (DB) (Cal), *Sattya Priya v. Gobinda Mohun*. (Negotiable Instruments Act, Section 4.)

5. ('16) 3 AIR 1916 P C 242 (244) : 43 Ind App 256 : 39 Ind Cas 401 (PC).



contexts. In the absence of special circumstances importing an obligatory sense, only the permissive sense must be adopted.<sup>1</sup> The position is summed up as follows in Halsbury's *Laws of England*, 1913, Vol. 27, pages 170-171 :

"Upon the principle that the ordinary sense of enacting words is primarily to be adhered to, provisions which appear on the face of them to be imperative cannot without strong reason be held to be directory ; nor are those which are susceptible of a permissive meaning to be construed in the first instance as imperative. A duty, however, may exist, outside and apart from the enacting words, whereby those on whom a faculty or power is conferred by the statute are under an obligation to exercise it. The expressions 'shall and may,' 'shall be empowered,' 'it shall be lawful for' and 'may' simply, have for this reason, though primarily permissive, been, in certain circumstances, treated as mandatory."

9b. "Includes."—See Notes on Section 2.

10. Exemption, provisions as to.—See Note 11.

11. **Proviso.**—A proviso to a section is in the nature of a substantive rule and should not be treated as an exception to the proposition stated in the section.<sup>1</sup> It must be taken in connection with the general language of the previous portion of the clause.<sup>2</sup> A proviso may be used as a guide in the selection of one or other of the possible constructions of the words used in an enactment, where there is doubt as to its scope or as to the proper view to be taken of it.<sup>3</sup> It should receive a strict construction<sup>4</sup> and it should not be used either to enlarge<sup>5</sup> or to limit<sup>6</sup> the clear scope of the section.

Provisos are often added to allay unfounded fears in the minds of certain persons who feel that but for such a proviso their cases may be covered by the section.<sup>7</sup> It was thus held in *Kamesharamma v. Venkatasubba Rao*<sup>8</sup> that where a proviso is added

#### Preamble—NOTE 9a

1.\*('78) 3 Cal 47 (57) : 4 Ind App 127 (136) : 1878 Pun Re No. 7 (PC), *Delhi and London Bank, Ltd. v. Melmoth A. D. Orchard*.

('98) 22 Bom 384 (387) (DB), *Vasudevacharya v. Sholapur Municipality*.

('90) 17 Cal 329 (335) (DB), *Moran v. Chairman of Motihari Municipality*.

For instances where a power conferred by a statute will amount to an obligation to exercise the same, see Maxwell, *Interpretation of Statutes*, Fifth Edition, pages 398, 399.

#### Preamble—NOTE 11

1.†('14) 1 AIR 1914 PC 140 (144) : 42 Cal 116 : 41 Ind App. 197 : 25 Ind Cas 451 (PC), *Maha Prasad Singh v. Ramani Mohan Singh*.  
(15) 2 AIR 1915 Mad 750 (755) : 39 Mad 341 : 27 Ind Cas 77 (DB), *Zamindar of Chellapalli v. Rajalapati Somayya*.

Also see Note 1.

2. ('14) 1 AIR 1914 PC 140 (144) : 42 Cal 116 : 41 Ind App 197 : 25 Ind Cas 451 (PC), *Maha Prasad Singh v. Ramani Mohan Singh*.

3. (1897) 1897 App Cas 647 (655) : 66 L J Ch 726 : 77 L T 284, *West Derby Union v. Metropolitan Life Assurance Society*.

4. ('32) 19 AIR 1932 Mad 46 (52) : 139 Ind-Cas 54 (DB), *Perichiappa Chettiar v. Nachiappan*. (It is not open to the Court to add words to a proviso with a view to enlarge the scope

of the proviso. The proviso must be restricted to the scope reasonably conveyed by the words used therein.)

5.† ('10) 33 Mad 102 (109) : 3 Ind Cas 701 (DB), *Natesa Chetti v. Vengu Nachiar*. (Cases which are otherwise clearly outside the scope of an enactment cannot be brought within it by any inference founded on the terms of the proviso.)

(1880) 5 Q B D 170 (174) : 42 L T 128, *Mullins v. Surrey Treasurer*. (Where the provisions made by the proviso go beyond the fair construction of the section, the proviso may be rejected.)

6. ('30) 17 AIR 1930 Mad 124 (125) : 53 Mad 702 : 123 Ind Cas 801 (SB), *Commissioner of Income-tax v. Suppan Chettiar and Co*. (A proviso should not by mere implication withdraw any part of what the main provision has given.)

7. ('10) 33 Mad 102 (109) : 3 Ind Cas 701 (DB), *Natesa Chetti v. Vengu Nachiar*.  
†(1897) 1897 App Cas 647 (656) : 66 L J Ch 726 : 77 L T 284, *West Derby Union v. Metropolitan Life Assurance Society*.

8. ('14) 1 AIR 1914 Mad 328 (329) : 38 Mad 1120 : 24 Ind Cas 474 (DB). (Where a proviso is added to a section by a later enactment, it only shows the interpretation which the framers of the amendment were disposed to place upon the sections as they



to a section by a later enactment or even where it is introduced at the time of the enactment, it is often done *ex abundanti cautela* (from excessive caution) and it by no means follows that the operation of the section is affected thereby.

It is not open to the Court to introduce an exception where the rule enacted by the Legislature is universal in its terms.<sup>9</sup>

See also A. I. R. Commentaries on the Civil Procedure Code, 4th (1944) Edition Preamble, NOTE 14.

**12. Change in accepted mode of interpretation—Effect.**—The rights of the parties to a contract are to be judged by that law which they intended to be bound by, or rather by which they may justly be presumed to have bound themselves.<sup>1</sup> Hence where parties enter into a contract according to the then accepted interpretation of law, they may be taken to be bound by it and the subsequent reversal of that interpretation does not displace the application of the previously accepted interpretation of law to the construction of the contract.<sup>2</sup>

**13. Conflicting provisions in statutes.**—It is a cardinal rule governing the interpretation of statutes that the Court should struggle against repugnancy and should construe an enactment, as far as possible, so as to avoid a conflict with the terms of other enactments on the statute book.<sup>1</sup> Similarly, a Court should try to reconcile inconsistencies within the same statute and should not interpret its provisions so as to result in repugnancy unless compelled to do so by the intractability of the language used. The language must be strained as far as possible before it is to be assumed that the Legislature in one section has enacted a rule which cannot be reconciled with the provisions of another section, for, that cannot have been intended.<sup>2</sup> The Court, in trying to reconcile inconsistencies, should give preference to a construction which avoids making any provision superfluous.<sup>3</sup>

Where two co-ordinate sections are apparently inconsistent an effort should be made, as said already, to reconcile them. If this is impossible, the later will generally override the earlier.<sup>4</sup>

Further, where a general intention is expressed by the Legislature and also a particular intention which is incompatible with the general one, the particular intention is considered as an exception to the general one. This rule applies whether the general and special provisions are contained in the same statute or different statutes.<sup>5</sup>

then stood. This interpretation is not authoritative, and in these circumstances the addition of the proviso is no reason for modifying the opinion which the Court would otherwise have arrived at on the construction of the original sections.)

9. ('14) 1 AIR 1914 Mad 502 (504) : 37 Mad 113 : 16 Ind Cas 947 (DB), *Secretary of State v. Kalekhan*.

#### Preamble—NOTE 12

1. (1865) 6 B & S 100 (133) : LR 1 Q B 115 : 35 L J Q B 74 : 13 L T 602 : 122 E R 1134, *Lloyd v. Guibert*.

2. ('04) 27 Mad 131 (142, 143) : 31 Ind App 1 (PC), *Abdul Aziz Khan v. Appayasami Naicker*.

#### Preamble—NOTE 13

1. ('25) 12 AIR 1925 Lah 415 (416) : 6 Lah 276 : 86 Ind Cas 844 (DB), *Wadhawa Mal v. Karim Baksh*.

('28) 15 AIR 1928 Lah 609 (614) : 9 Lah 701 : 111 Ind Cas 175 (FB), *Khan Gul v. Lakha Singh*.

2.†('32) 19 AIR 1932 Cal 699 (700) : 60 Cal 233 : 142 Ind Cas 891 (DB), *Giribala Dasi v. Mader Gazi*.

('35) 22 AIR 1935 Pesh 69 (71) : 155 Ind Cas 1022 (DB), *Abdullah Khan v. Bahram Khan*.

('32) 19 AIR 1932 Mad 336 (342) : 55 Mad 671 : 137 Ind Cas 369 (DB), *Mariyayee Ammal v. Ponnuswamy Chettiar*.

3. ('32) 19 AIR 1932 Oudh 63 (64) : 7 Luck 350 : 135 Ind Cas 695 (DB), *Bankey Behari Lal v. Abdul Rahman*.

4. ('21) 8 AIR 1921 Cal 603 (604) : 61 Ind Cas 529 (DB), *Amar Chand Roy v. Prasanna Dasi*.

5. ('21) 8 AIR 1921 Cal 603 (604) : 61 Ind Cas 529 (DB), *Amar Chand Roy v. Prasanna Dasi*.

('28) 15 AIR 1928 Lah 609 (613, 614) : 9 Lah 701 : 111 Ind Cas 175 (FB), *Khan Gul v. Lakha Singh*.



This rule is contained in the maxim *specialia generalibus derogant* (special things derogate from the general.)

**14. Repealing Act—Effect of.**—The effect of the repeal of a statute is expressly dealt with in the General Clauses Act, 1897, Ss. 6 to 8. Under S. 6 (c) of that Act, the repeal of an Act does not take away the rights which had vested in a person under the repealed Act. Thus in the undermentioned case<sup>1</sup> an order of assessment was made against a person under the Income-tax Act of 1918. He appealed and on remand of the case a final order of assessment was made fixing a smaller amount. Under S. 19 of that Act a refund of the difference could be claimed. However, during the period between the passing of the two orders, the section was repealed by the Income-tax Act of 1922. It was held that the assessee was not deprived of his right to refund.

Where an Act is repealed by another Act and the latter is subsequently repealed, the first Act is not revived unless there is an express provision reviving it.<sup>2</sup> (See General Clauses Act, S. 7.)

**15. Retrospective operation.**—It is a general principle of law that a statute should not be construed so as to have a retrospective operation unless it is clearly declared to be retrospective.<sup>1</sup> *Nova constitutio futuris formam impone debet non practeritis* (a new enactment should affect future and not past times). The reason is that legislation by which the conduct of mankind is regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law. Hence a statute which touches rights in existence at the time of its passing is not to be applied retrospectively in the absence of express enactment or necessary intendment to the contrary.<sup>2</sup> Thus, provisions which deprive of their existing finality orders

#### Preamble—NOTE 14

1. ('24) 11 AIR 1924 Nag 24 (25, 26): 76 Ind Cas 82 (DB), *Commissioner of Income-tax, C. P. v. Dharamchand Dalchand*.
2. ('17) 4 AIR 1917 Cal 243 (245): 44 Cal 459: 37 Ind Cas 48, *In the matter of Jewa Nathoo*.
- ('98) 25 Cal 333 (336): 2 Cal WN 11 (DB), *Deputy Legal Remembrancer v. Ahmad Ali*.
- ('85) 9 Bom 233 (235) (DB), *Hari Mahadaji Savarkar v. Balambhat Raghunath Khare*.

#### Preamble—NOTE 15

1. ('31) 18 AIR 1931 Lah 145 (152): 131 Ind Cas 353, *Pars Ram v. Emperor*.
- ('32) 19 AIR 1932 Rang 197 (198): 10 Rang 465: 140 Ind Cas 156, *Ko Po Kun v. C. A. M. A. L. Firm*.
- ('14) 1 AIR 1914 Lah 345 (347): (1914) Pun Re No. 86: 26 Ind Cas 743, *Karar Hassan v. Mustafa Hasan*.
- ('27) 14 AIR 1927 Mad 85 (86): 99 Ind Cas 143, *Balaji Singh v. Gangamma*.
- ('28) 15 AIR 1928 Cal 640 (642): 56 Cal 512: 113 Ind Cas 49 (FB), *Sadar Ali v. Daliluddin Ostagar*.
- ('90) 14 Bom 516 (525) (DB), *Jawabmal Jitmal v. Muktabai*.
- ('13) 19 Ind Cas 793 (809) (DB) (Cal), *Manjuri Bibi v. Akkel Mahmud*.

2. ('04) 26 All 119 (129, 130): 31 Ind App 30 (PC), *Muhammad Abdus Samad v. Qurban Husain*.
- ('27) 14 AIR 1927 P C 242 (244): 9 Lah 281: 54 Ind App 421: 106 Ind Cas 156 (PC), *Delhi Cloth and General Mills Co., Ltd. v. Commissioner of Income-tax, Delhi*.
- ('27) 14 AIR 1927 Mad 85 (86): 99 Ind Cas 143, *Balaji Singh v. Gangamma*.
- ('20) 7 AIR 1920 Cal 435 (437): 47 Cal 1108: 58 Ind Cas 327 (DB), *Promatha Nath Pal v. Saurav Dasi Chowdhurani*. (Section 66, C.P. C., held not a mere rule of procedure but one effecting title; hence the section is not retrospective.)
- ('31) 18 AIR 1931 Cal 100 (102): 129 Ind Cas 849 (DB), *Nagendra Nath v. Mon Mohan Singha*.
- ('27) 14 AIR 1927 Mad 977 (979): 50 Mad 857: 106 Ind Cas 616 (FB), *Daivanayaga Reddiar v. Renukambal Ammal*.
- ('32) 19 AIR 1932 Rang 197 (199): 10 Rang 465: 140 Ind Cas 156, *Ko Po Kun v. C. A. M. A. L. Firm*. (Amendment of S. 101 of the T. P. Act by the Amending Act XX of 1929 has no retrospective effect.)
- ('14) 1 AIR 1814 Lah 345 (347): 1914 Pun Re No. 86: 26 Ind Cas 743 (DB), *Karar Hassan v. Mustafa Hasan*. (Section 12 of the Pensions Act (XXIII of 1871) is not retrospective.)



which, when the statute came into force were final, are provisions which touch existing rights and hence cannot have retrospective effect.<sup>3</sup>

In order that a statute affecting rights existing at the time of its passing may be construed as having retrospective effect there must be *express enactment* or *necessary intendment* to that effect. It is only when a retrospective effect cannot be avoided without doing violence to the language of the enactment that such effect may be given. If the enactment is expressed in language which is fairly capable of either interpretation it ought to be construed only as a prospective one.<sup>4</sup> The fact that some of the provisions of a statute have been made definitely not retrospectively must not be taken as implying that other provisions necessarily have retrospective operation.<sup>5</sup> Retrospective effect of statutes being disfavoured, a statute must never be construed so as to have greater retrospective operation than its language demands.<sup>5a</sup>

#### Penal statutes.

Penal statutes are not to be construed as having retrospective effect, so as to punish an act done at a time when no illegality was attached to it.<sup>6</sup>

#### Explanatory or declaratory statutes.

Statutes which are explanatory or declaratory are to be construed as having retrospective effect as they merely give an authoritative explanation of the words, phrases or clauses used in a statute and whenever that statute has to be applied the explanation also should be applied. However, no recital in a declaratory or amending statute can render void that which has been declared by the Courts to have been done rightly under the law.<sup>7</sup>

It is not necessary that an Act should be *named* as an explanatory or declaratory Act, in order that it may operate retrospectively. The fact that from the words used in the Act, the Court comes to the conclusion that the Act is explanatory or declaratory is sufficient.<sup>8</sup>

#### Procedural statutes.

Statutes dealing merely with procedure are to be construed as having retrospective operation,<sup>9</sup> there being no right vested in any of the suitors in the course of

('28) 15 AIR 1928 Cal 640 (642) : 56 Cal 512 : 113 Ind Cas 49 (FB), *Sadar Ali v. Dalilud-din Ostagar*.

('13) 19 Ind Cas 793 (809) (DB) (Cal), *Manjuri Bibi v. Akkel Mahmud*.

('90) 14 Bom 516 (525) (DB), *Javanmal Jitmal v. Muktabai*. (Proviso to S. 56 of the Dekkhan Agriculturists' Relief Act, 1879, is not retrospective.)

3. ('27) 14 AIR 1927 P C 242 (244) : 9 Lah 284 : 54 Ind App 421 : 106 Ind Cas 156 (PC), *Delhi Cloth and General Mills Co., Ltd. v. Income-tax Commissioner, Delhi*.

4. ('33) 20 AIR 1933 Cal 435 (437) : 60 Cal 1037 : 143 Ind Cas 164 (SB), *Jiban Krishna v. Abdul Kader*.

5. ('32) 19 AIR 1932 Rang 197 (198) : 10 Rang 465 : 140 Ind Cas 156, *Ko Po Kun v. C. A. M. A. L. Firm*.

5a. ('81) 5 Bom 653 (658) (DB), *Ichharam Kalidas v. Govindram Bhowanishanker*.

('13) 19 Ind Cas 793 (809) (DB) (Cal), *Manjuri Bibi v. Akkel Mahmud*.

6. ('31) 18 AIR 1931 Lah 145 (152) : 131 Ind Cas 353, *Pars Ram v. Emperor*.

7. ('27) 14 AIR 1927 Mad 85 (86) : 99 Ind Cas 143, *Balaji Singh v. Gangamma*.

8. ('27) 14 AIR 1927 Mad 85 (86) : 99 Ind Cas 143, *Balaji Singh v. Gangamma*.

9. ('27) 14 AIR 1927 P C 242 (244) : 9 Lah 284 : 54 Ind App 421 : 106 Ind Cas 156 (PC), *Delhi Cloth and General Mills Co., Ltd. v. Commissioner of Income-tax, Delhi*.

('20) 7 AIR 1920 Cal 435 (437) : 47 Cal 1108 : 58 Ind Cas 327 (DB), *Promotha Nath Pal v. Saurav Dasi Chowdhurani*.

('27) 14 AIR 1927 Mad 85 (86) : 99 Ind Cas 143, *Balaji Singh v. Gangamma*.

('33) 20 AIR 1933 Cal 435 (437) : 60 Cal 1037 : 143 Ind Cas 164 (SB), *Jiban Krishna v. Abdul Kader*.

('95) 19 Bom 204 (206) (DB), *Balkrishna Pandharinath v. Bapu Yesaji*. (The effect of S. 258, C. P. C. (Act XIV of 1882) was to make an adjustment not cognizable by Court unless certified. Section 27 of Act VII of 1888 made uncertified adjustments cognizable by Courts other than the Court executing the decree. This merely affects the practice of the Court and can apply to adjustments made previous to the Act.)



procedure.<sup>10</sup>

### Stamp Act.

Where a document which is insufficiently stamped is inadmissible in evidence under the law in force at the time of its execution, but subsequently the law is changed making it admissible on payment of penalty, the amendment operates retrospectively so as to make the document admissible.<sup>11</sup> The reason is that in such cases the question involved is merely of procedure and no vested right is affected by the amendment.

See also Note 38 and S. 35 Notes 2 and 4.

**16. Interpretation of fiscal statutes.**—Statutes imposing pecuniary burdens should be construed strictly.<sup>1</sup> It is a well-settled principle that the subject is not to be taxed unless the statute imposes the charge in clear and unambiguous language.<sup>2</sup> In a case of reasonable doubt, a construction most beneficial to the subject is to be

(1900) 1900 Pun Re No. 26, p. 91 (91) (DB), *Field E. T., In the goods of.* (Section 19 (1) (i) of the Court-fees Act is retrospective.)

(14) 1 AIR 1914 Lah 345 (346): 1914 Pun Re No. 86: 26 Ind Cas 743 (DB), *Karar Hassan v. Mustafa Hasan.*

(90) 14 Bom 516 (525) (DB), *Javanmal Jitmal v. Muktabai.* (Proviso to S. 56 of the Dekkhan Agriculturists' Relief Act, 1879, is not retrospective.)

10. (13) 19 Ind Cas 793 (810) (DB) (Cal), *Manjuri Bibi v. Akkel Mahmud.*

11. (20) 7 AIR 1920 Cal 754 (755): 59 Ind Cas 3 (DB), *Nilratan Mitra v. Abdul Gafar Gazi.*

### Preamble—NOTE 16

1. (03) 30 Cal 565 (575) (SB), *Reference under the Stamp Act II of 1899.* (Case relating to Stamp-law—Question as to whether instrument was policy of sea-insurance.)

'74) 11 Bom HCR 129 (135) (DB), *Girdhar Nagjishet v. Gunpat Moroba.* (Case relating to Stamp-law, viz. Bombay Regulation XVIII of 1827.)

(35) 22 AIR 1935 Bom 256 (257): 59 Bom 469: 156 Ind Cas 960 (SB), *Sharanbasappa Tippanna v. Sanganbasappa Sridramappa.* (That is to say, the Crown has to show that the tax in question is imposed upon a fair construction of the language used.)

'14) 1 AIR 1914 Lah 524 (526): 1915 Pun Re No. 29: 27 Ind Cas 489 (DB), *Sukh Dial v. Mani Ram.*

(18) 5 AIR 1918 Lah 113 (113): 1918 Pun Re. No. 9: 43 Ind Cas 383 (DB), *Rustomji v. Kalasing.* (Court-fees Act.)

(34) 21 AIR 1934 Lah 530 (533): 15 Lah 501: 150 Ind Cas 781 (SB), *Bhola Ram and Sons, Ltd. v. Emperor.*

(1842) 152 ER 249 (251): 11 LJ Ex 219: 60 RR 834, *Harris v. Birch.* (The Stamp Act is to be construed strictly and to be extended to such cases only as clearly fall within its provisions.)

(81) 7 Cal 703 (706): 12 Cal LR 121 (FB), *Syed Safadar Reza v. Amzadali.* (The Stamp Act is a taxing statute and all taxing Acts

must be construed strictly—Pontifex, J., in the course of argument.)

(32) 19 AIR 1932 Sind 73 (75): 26 Sind LR 29: 139 Ind Cas 95, *Tyabali A. Mandviwala v. Parpatibai.*

[See however (05) 29 Bom 203 (207): 6 Bom LR 844 (SB), *In re Nirabai.* (An enactment imposing a burden requires a strict construction in favour of the subject. But an exemption must be strictly construed in favour of the State.)]

2. (1880) 5 App Cas 842 (856): 50 LJ PC 1: 43 LT 177, *Oriental Bank Corporation v. Wright.*

(1843) 152 ER 929 (931): 13 LJ Ex 57: 63 RR 678, *Wroughton v. Turtle.*

(1847) 3 CB 938 (941): 136 ER 376: 16 LJ C, P 117, *Daines v. Heath.*

(1871) 16 Suth WR 208 (209) (DB), *In the matter of Port Canning Land Co., Ltd.* (Acts which impose a tax or charge upon the subject cannot be extended by implication.)

(32) 19 AIR 1932 Cal 346 (347): 59 Cal 528: 137 Ind Cas 469, *In re Ananda Lal Chakrabutty.*

(31) 18 AIR 1931 Mad 683 (684): 55 Mad 26: 134 Ind Cas 1137 (DB), *Ramaswami Ayyar v. Ranagaswami Ayyar.*

(1891) 2 Ch 613 (623): 60 LJ Ch 537: 64 LT 515: 39 WR (Eng) 565, *Thorley Re Throley v. Massam.*

(1878) 3 App Cas 473 (478): 47 LJ QB 385: 38 LT 430: 26 WR (Eng) 483, *Cox v. Rabbits.* (You must find words to impose the tax, and if words are not found which impose the tax, it is not to be imposed.)

(1862) 158 ER 695 (699): 31 LJ Ex 233: 10 WR (Eng) 304, *Nicholson v. Fields.*

(1831) 2 B & Ad 43 (59): 109 ER 1059 (1065): 36 RR 459, *Hul Dock Co. v. Browne.* (A tax shall not be imposed without a plain declaration of the intent of the Legislature to impose it.)

(1913) 3 KB 212 (219): 82 LJ KB 900: 108 LT 887, *Inland Revenue Commissioners v. Gribble.*

(1807) 8 East 242 (245): 103 ER 334 (335), *Warrington v. Furber.*



adopted.<sup>3</sup> Thus, a construction which would have the effect of making a person liable to pay the same tax twice in respect of the same subject-matter should not be

- (1855) 11 Ex 452 (456) : 25 L J Ex 19 : 156 E R 908 (910) : 105 R R 614, *In re Micklethwait*.
- (1825) 4 B & C 243 (245) : 107 E R 1049 (1050) : 3 L J (O S) K B 211 : 28 R R 237, *Denn Dem Manifold v. Diamond*.
- (1896) 2 Q B 187 (193) : 65 L J Q B 582 : 74 L T 699 : 45 W R (Eng) 14, *Clifford v. Commissioner of Inland Revenue*.
- (1914) 1914 App Cas 765 (771) : 83 L J K B 1083 : 111 LT 343, *Attorney-General v. Milne*. (To succeed the Crown must bring the case within the letter of the enactment. It is not enough to bring the case within the spirit of it.)
- (1851) 6 Ex 464 (479) : 20 L J Ex 269 : 17 L T (O S) 128 : 155 E R 624, *The Marquis of Chandos v. Commissioners of Inland Revenue*. (Stamp Act, 13 and 14 Vict., C. 97.)
- (1850) 12 Q B 328 (407) : 94 R R 315 : 116 E R 891, *Gosling v. Veley*. (No pecuniary burden can be imposed upon the subjects except upon clear and distinct legal authority established by those who seek to impose the burden.)
- [See however (1840) 6 M & W 756 (789) : 10 L J Ex 105 : 55 R R 777, *Platt v. Routh*.]
3. (1896) 2 Q B 187 (193) : 65 L J Q B 582 : 74 L T 699 : 45 W R (Eng) 14, *Clifford v. Commissioners of Inland Revenue*.
- (1908) 31 Mad 408 (413) : 18 Mad L Jour 349 (DB), *Mylapore Hindu Permanent Fund, Ltd. v. The Corporation of Madras*.
- (1911) 13 All 66 (73) : 1890 All W N 238 (SB), *Radha Bai v. Nathu Ram*. (Case relating to Stamp Act.)
- (1913) 15 All 56 (58) : 1892 All W N 234 (DB), *Bishambarnath v. Nandkishore*. (Do.)
- (1915) 2 AIR 1915 All 81 (82) : 37 All 159 : 27 Ind Cas 731 (FB), *In the matter of Shambhu Dyal*. (Do.)
- (1933) 20 AIR 1933 All 321 (329) : 55 All 468 : 143 Ind Cas 486 (FB), *Ram Swarup v. Joti*. (Do.)
- (1918) 12 Bom 98 (100) (DB), *Fulchand v. Bai Ichha*.
- (1911) 8 Bom H C R (OC) 169 (180) (DB), *Megji Hansraj v. Ramji Joita*.
- (1911) 8 Bom H C R (A C) 213 (217) (DB), *Dulabh Shival v. Hope*.
- (1914) 10 Cal 274 (282) (SB), *Anonymous Case*. (Case relating to Stamp Act.)
- (1921) 8 AIR 1921 Cal 40 (43, 44) : 48 Cal 161 : 61 Ind Cas 107 (SB), *Killing Valley Tea Company, Ltd. v. Secretary of State*. (The Crown seeking to recover the tax must bring the subject within the letter of the law, otherwise the subject is free, however much within the spirit of the law the case might appear to be.
- There can be no equitable construction admissible in a fiscal statute; the benefit of the doubt is the right of the subject.)
- (1931) 18 AIR 1931 Cal 193 (201) : 58 Cal 33 : 127 Ind Cas 775 (FB), *Janardhan Rao v. Secretary of State*.
- (1936) 23 AIR 1936 Cal 814 (815) : ILR (1937) 1 Cal 461 : 167 Ind Cas 202 (DB), *Radha Gobinda Sen v. Ram Brahma Mandal*.
- (1914) 1 AIR 1914 Lah 214 (217) : 1913 Pun Re No. 111 : 22 Ind Cas 503 (FB), *Barru v. Lachman*.
- (1923) 10 AIR 1923 Lah 14 (15) : 3 Lah 349 : 77 Ind Cas 616 (FB), *Sundar Das v. King-Emperor*.
- (1928) 15 AIR 1928 Lah 113 (114) : 8 Lah 730 : 110 Ind Cas 264 (DB), *Beli Ram v. Ishar Das*. (Fiscal statutes must be interpreted in a liberal and generous spirit in favour of the subject so as to make its operation less onerous having due regard to the language used in the enactment.)
- (1916) 9 Mad 146 (148) (FB), *Reference under Stamp Act S. 46*. (Court-fees Act.)
- (1900) 13 Mad 255 (263) (DB), *Rainier v. Gould*.
- (1916) 3 AIR 1916 Mad 374 (376) : 38 Mad 646 : 21 Ind Cas 876 (FB), *Secretary of Commissioner of Salt Akbari and Separate Revenue, Madras v. Mrs. E. W. Orr and Bank of Madras*.
- (1926) 13 AIR 1926 Mad 1038 (1040) : 49 Mad 903 : 97 Ind Cas 993 (FB), *Board of Revenue, Madras v. Moopanna Somarazu*.
- (1930) 17 AIR 1930 Nag 73 (76) : 123 Ind Cas 417 (DB), *Noksing v. Bholusing*.
- (1931) 18 AIR 1931 Oudh 99 (103) : 6 Luck 601 : 132 Ind Cas 225 (SB), *Secretary of the Board of Revenue, U. P. v. Lalta Bakhsh Singh*. (Case under Stamp Act.)
- (1914) 1 AIR 1914 Low Bur 245 (246) : 7 Low Bur Rul 356 : 24 Ind Cas 793 (DB), *In re Catherine Thaddeus*. (Court-fees Act.)
- (1844) 11 Cl and Fin 590 (607) : 8 E R 1225 (1232) : 65 R R 261, *Stockton and Darlington Railway Co. v. Barrett*.
- (1832) 8 Bing 146 (152) : 131 E R 356 (358, 359) : 1 LJCP 59, *Doe D. Scruton v. Snaith*. (Stamp Act.)
- (1855) 11 Ex 190 (192) : 25 L T (O S) 130 : 105 R R 485 : 3 W R (Eng) 457 : 156 E R 798 (799), *Gurr v. Scudds*. (Do.)
- (1902) 1 KB 388 (396) : 71 L J K B 289 : 85 LT 714 : 50 W R (Eng) 210, *Attorney-General v. Selborne*.
- (1907) 34 Cal 257 (268) : 5 Cal L Jour 148 (DB), *Manindra Chandra v. Secretary of State*. (It is necessary to state, however, that this rule, while valuable as a caution, cannot be taken as substantially varying the ordinary rules for construing all statutes. Case law discussed.)



adopted unless the words are very clear and precise to that effect.<sup>4</sup>

On the other hand, when the language of the Act is plain and unambiguous, no considerations of hardship to the subject or as to what might be reasonable or equitable, can affect the interpretation.<sup>5</sup>

Hence the general words of a fiscal Act cannot be restrained by the Court so as to exclude cases that would otherwise be covered by the words.<sup>5a</sup> Thus, where a stamp duty is imposed on all instruments of conveyance *executed* in the country, it is not open to the Court to hold that the tax does not apply to cases where the *property* conveyed is situated abroad.<sup>5b</sup>

('15) 2 AIR 1915 All 198 (199): 37 All 264: 28 Ind Cas 348 (FB), *In the matter of Somesh Dut.* (In dealing with an Act of this kind (Stamp Act) we have to construe the Act in favour of the subject.)

'44) 31 AIR 1944 Bom 325 (327): I L R (1944) Bom 696: 221 Ind Cas 147 (SB), *Superintendent of Stamps, Bombay v. Breul & Co.* (Stamp Act—The benefit of doubt is the right of the subject.)

('18) 5 AIR 1918 Lah 354 (355): 1918 Pun Re No. 115: 44 Ind Cas 261 (SB), *Rustomji v. Emperor.* (Stamp Act.)

('24) 11 AIR 1924 Bom 524 (525): 49 Bom 73: 84 Ind Cas 421 (DB), *Waman Martand v. Commissioner, Central Division.* (Case under Stamp Act, S. 24.)

\*('21) 8 AIR 1921 Low Bur 30 (31, 32): 11 Low Bur Rul 299: 67 Ind Cas 781 (DB), *Rowe & Co. v. Secretary of State.* (Income-tax Act.)

[See (1879) 4 App Cas 197 (202, 203): 49 L J Q B 130: 40 L T 630: 27 W R (Eng) 666, *Pryce v. Monmouthshire Canal and Railway Cos.* (Principle does not apply to any considerable extent where the payment spoken of in the Act of Parliament is a payment to be made in return for services rendered, and above all in a case where Parliament does not step in to give the right to payment but rather to moderate and limit a right to payment which otherwise might exist without limit, or at all events with only such limits as would be placed upon it by a *quantum meruit* assessment.)]

4. Maxwell, *Interpretation of Statutes*, 5th Edn., pages 463 and 464.

5.†('31) 18 AIR 1931 Cal 193 (195): 58 Cal 33: 127 Ind Cas 775 (FB), *Janardhan Rao v. Secretary of State.*

('36) 23 AIR 1926 Cal 814 (815): ILR (1937) 1 Cal 461: 167 Ind Cas 202 (DB), *Radha Gobinda Sen v. Ram Brahma Mondal.*

('23) 10 AIR 1923 Lah 14 (15): 3 Lah 349: 77 Ind Cas 616 (FB), *Sundar Das v. King-Emperor.*

('07) 34 Cal 257 (269): 5 Cal L Jour 148 (DB), *Manindra Chandra v. Secretary of State.* (Following *Attorney-General v. Carlton Bank*, (1899) 2 Q B 158, 164 and *Pryce v. Monmouthshire Canal and Railway Cos.* (1879) 4 App Cas 197, 202.)

(1896) 2 Q B 187 (193): 65 L J Q B 582: 74 L T 699: 45 W R (Eng) 14, *Clifford v. Commissioner of Inland Revenue.* (The rule of strict construction does not mean that where the plain language of a statute imposes a tax or duty the Court is to construe it according to any other principle than would apply to any other statute.)

('35) 22 AIR 1935 Lah 364 (367): 16 Lah 667: 158 Ind Cas 502 (DB), *Abdul Hassain Khan v. Mt. Mahmadi Begam.* (A Court has to interpret the law as it stands and is not competent to play the role of a legislator and to introduce amendments based on equitable considerations to remove the possible defects.)

('34) 21 AIR 1934 Pat 178 (180, 181): 13 Pat 336: 147 Ind Cas 1236 (SB), *Commissioner of Income-tax v. Kameshwar Singh.*

(1868) 3 Ex 263 (268): 37 L J Ex 109: 18 L T 725: 16 W R (Eng) 1055, *Foley (Lord) v. Commissioners of Inland Revenue.* (Acts of Parliament imposing stamp duties ought to be construed according to the plain and ordinary meaning of the words used as it appears from the words themselves, and an incongruity does not authorise a Court of law to adopt a strained and forced construction in order to avoid it. It is better both for the state and the subject that the ordinary rule of construction should be applied, and that the error or mistake, if it be a mistake, should be rectified by the Legislature.)

(1826) 5 B & C 41 (47): 7 Dow and Ry KB 800: 108 ER 16, *Clayton v. Burtenshaw.* (Inconvenience.)

5a. † (1855) 11 Ex 458 (460): 156 ER 911 (912): 105 RR 618, *Wright v. Inland Revenue Commissioners.*

(1864) 159 ER 347 (354): 33 L J Ex 263: 10 L T 655, *Mortimore v. Inland Revenue Commissioners.*

('14) 1 AIR 1914 Mad 502 (504, 505): 37 Mad 113: 16 Ind Cas 947 (DB), *Secretary of State v. Kalekhan.*

(1907) 1 KB 462 (475): 76 L J KB 212: 96 L T 267, *General Council of the Bar (England) v. Inland Revenue Commissioners.*

5b. (1855) 11 Ex 458 (460): 156 ER 911: 105 RR 618, *Wright v. Inland Revenue Commissioners.*



In *Partington v. Attorney-General*<sup>6</sup> Lord Cairns stated the principle to be applied in construing fiscal legislation, as follows :

“If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.”

Thus, in construing fiscal statutes, the intention of the law or the governing purpose of the Act should not be considered. As observed by Lord Halsbury in *Tennant v. Smith*:<sup>7</sup>

“....in a taxing Act, it is impossible, I believe, to assume any intention, any governing purpose in the Act, to do more than take such tax as the statute imposes. In various cases, the principle of construction of a taxing Act has been referred to in various forms, but I believe they may be all reduced to this, that inasmuch as you have no right to assume that there is any governing object which a taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject for taxation, you must see whether the tax is expressly imposed.”

In *Attorney-General v. Carlton Bank*,<sup>8</sup> however, Lord Chief Justice Russell did not agree with the view that fiscal enactments are subject to any *special* rules of interpretation. His Lordship observed as follows :

“....I see no reason why special canons of construction should be applied to any Act of Parliament, and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the Court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, namely to give effect to the intention of the Legislature as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed. The Court must no doubt ascertain the subject-matter to which the particular tax is by the statute intended to be applied, but when once that is ascertained, it is not open to the Court to narrow or whittle down the operation of the Act by seeming considerations of hardship or of business convenience or the like. Courts have to give effect to what the Legislature has said.”

The *Law Quarterly Review*<sup>9</sup> in its editorial remarks as regards the above observations, used the following words :

“It is refreshing from its broad common sense, and brushes aside a whole host of technical and unreal arguments constantly produced either for or against the Crown, whenever the incidence of a tax is in dispute. The two maxims, ‘There is no reason why a taxing Act should be construed differently from any other Act,’ and ‘Courts have to give effect to what the Legislature has said,’ are invaluable. We hope they will be noted by the writers of text-books, no less than by Judges. If properly weighed, these maxims will cancel many pages in treatises on the interpretation of statutes.

6. (1869) 4 H L 100 (122) : 38 L J Ex 205 : 21 L T 370.

7. (1892) 1892 App Cas 150 (154) : 61 L J P O 11 : 66 L T 327.

8. (1899) 2 Q B 158 (164) : 68 L J Q B 788 : 81 L T 115 : 47 W R (Eng) 650.

9. *Law Quarterly Review*, Vol. XV, pages 347, 348.



But one exception can be taken to the language used by Lord Russell of Killowen. The words, 'I know of no authority for saying that a taxing Act is to be construed differently from any other Act,' go a little beyond the fact. Whoever chooses to look for it may find a good deal of authority, or, in other words, many dicta let drop by eminent Judges in favour of construing Revenue Acts in a peculiar manner, nor, it may be added, were these dicta in themselves absurd. They are now worthless because they refer to a state of things which has passed away. When a tax was a real gift from the tax-payer to the king, it was reasonable to construe narrowly the terms of the grant. Now that the taxing Act is a law, passed by the nation for the raising of money required for the national expenditure, there is no apparent reason why it should be construed differently from any other statute."

The words of Lord Russell quoted above and the comments of the *Law Quarterly Review* thereon do not seem to be quite accurate when they say that fiscal statutes are not subject to any *special* rules of construction. It is well-known that in cases of ambiguity, Courts are at liberty to adopt what is called an *equitable* construction of statutes.<sup>10</sup> In other words, the Courts can look beyond the words used in a section and try to ascertain from other sources, the intention of the Legislature, for instance, by considering other provisions of the enactment, the preamble, object of the Act, etc. Though this mode of interpretation is only to be resorted to in exceptional cases, it is *permissible* in the case of the generality of statutes. But this so-called equitable mode of construction is not allowable in the case of fiscal statutes. In the case of such statutes, if there is any doubt in the meaning of a provision imposing the burden, the benefit of the doubt must be given to the subject. It will not be open to the Court, by referring to the intention of the Legislature as disclosed by other sources, to hold the subject liable to the tax.

It is no doubt true that when the liability to a tax is imposed by clear and unambiguous language, the subject cannot escape such liability on grounds of hardship and so forth. It is true that this result follows from the principle applicable to all statutes that the Courts should unflinchingly give effect to the clear words of the Legislature and that fiscal enactments are no exception to this rule.

But this does not show that fiscal statutes are not subject to any special principles in *any respect*. The exceptional nature of such laws is seen when there is an *ambiguity* in them. This position is not touched by the assertion that when there is *no ambiguity*, fiscal laws are to be interpreted in the same way as other laws.

Even Lord Russell's observations quoted above have not touched the question of *ambiguity*. They, in substance, only re-affirm the well-established proposition that a tax imposed by clear and unambiguous language cannot be avoided on any ground of hardship, business convenience and the like.

In *Manindra Chandra v. Secretary of State*,<sup>11</sup> Mookerji J., of the Calcutta High Court also expressed the view that the rule of strict construction of fiscal statutes did not involve any substantial variation of the ordinary rules for construing all statutes. His Lordship observed as follows:

"It is necessary to state, however, that this rule, while valuable as a caution, cannot be taken as substantially varying the ordinary rules for construing all statutes. As was remarked by Lord Cairns in *Pryce v. Monmouthshire Canal and Railway Companies*,<sup>11a</sup> the rule means little more than this, that

10. See Salmond, *Jurisprudence*, 7th Edn., (1924), page 183 and 9th Edn., 1937, page 222.

11. ('07) 34 Cal 257 (269) : 5 Cal L Jour 148

(DB).

11a. (1879) 4 App Cas 197 (202) : 49 L J Q B 130 : 40 L T 630 : 27 W R (Eng) 666.



inasmuch as there was not any *a priori* liability in a subject to pay any particular tax, nor any antecedent relationship between the tax-payer and the taxing authority, no reasoning founded on any supposed relationship of the tax-payer and the taxing authority, could be brought to bear upon the construction of the Act, and, therefore, the tax-payer had a right to stand upon the literal construction of the words used, whatever might be the consequences."

The above, no doubt, gives a *reason* why the strict or literal mode of construction is adopted in the case of fiscal statutes. But it is not shown how there is nothing special about this.

No doubt, once it is conceded that fiscal statutes should be construed strictly, in case of ambiguity—a proposition which does not seem to be questioned by any one—the question whether this is something peculiar and special to fiscal statutes is academical. But the point has to be cleared in order to understand what is meant by the strict construction of fiscal statutes. Further, such clearing of the point is necessary in order to dispel the notion that might otherwise be entertained, namely, that there being nothing special about the interpretation of fiscal enactments, it might be open, in exceptional cases, to adopt the equitable construction even in respect of such statutes.

In *In re Nirabai*,<sup>12</sup> it was held by the High Court of Bombay that though an enactment imposing a burden requires a strict construction in favour of the subject yet an *exemption* must be strictly construed in favour of the State. But this view does not seem to be correct; see for instance, the decisions noted under Sch. I, Art. 5 Note 17 and the undermentioned case.<sup>13</sup> See also S. 3, Note 12.

For a fuller discussion of the topic, under this heading see A. I. R. Commentaries on the Court-fees Act and the Suits Valuation Act, 1st (1944) Edition, Preamble, Note 13, Maxwell's *Interpretation of Statutes*, 5th Edition, pp. 463 and 464, and Halsbury's *Laws of England*, Vol. XXIV, pp. 711 and 712.

**16a. History of Stamp Legislation in India.**—The earliest legislation imposing stamp duties in India appears to have been the Bengal Regulation VI of 1797 which provided for the levy of such duties in Bengal. Similar Regulations were subsequently made for the Provinces of Madras and Bombay, namely, the Madras Regulation VIII of 1808 and the Bombay Regulation XIV of 1815. These were followed by further Regulations from time to time in the three Provinces. All these Regulations had only a local application and were in force in the respective Provinces in which they were passed. The Stamp Act, XXXVI of 1860, repealed all the Stamp Regulations then in force, and enacted a single Stamp Law applicable to the whole of British India.

This was the first *general* Act of the Governor-General in Council relating to stamp duties.

Prior to this, there were three minor Acts, viz., Acts XIV of 1840, IX of 1842 and XV of 1859, relating to stamp duty in certain special cases. All these were subsequently repealed.

Act XXXVI of 1860 was repealed and succeeded by Act X of 1862 which in its turn was amended and consolidated into Act XVIII of 1869. This was repealed

12. ('05) 29 Bom 203 (207) : 6 Bom L R 844 (S B). (Case relating to proviso to Explanation in Stamp Act, Section 24.)

13. (1878) 3 App Cas 355 (370) : 47 L J P C 31 : 26 W R (Eng) 559, *Armstrong v. Wilkinson*.

(When the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out and a liberal construction should be given to the words of exception confining the operation of the duty.)



by Act I of 1879 which consolidated and amended the previous Stamp Law. This Act was largely modelled on the lines of the English Stamp Act of 1870 (33 & 34 Vict., C. 97).

Act I of 1879 has been repealed and replaced by the present Act II of 1899.

#### Subsequent Amendments.

This Act has been amended from time to time by the Central Legislature. These amendments have been noted in the appropriate places.

#### Provincial Amendments.

The Act has also been amended, so far as the Provinces are concerned, by various Provincial Acts. (See under the heading "Provincial Amendments" under S. 1). These amendments have also been noted in the appropriate places.

**17. Construction of Stamp Act.**—The Stamp Act is purely a fiscal statute. Its sole object is to increase the revenue and all its provisions must be construed as having in view the protection of the revenue.<sup>1</sup> Being a fiscal statute, it is thus subject to the rule of strict construction as stated in Note 16. The Act will, therefore, apply only to such cases as clearly fall within its provisions. A document, therefore, which does not come within the description of documents required by this Act to be stamped, need not be stamped.<sup>2</sup>

The rule of strict construction also requires that before any person can be punished for an offence relating to the stamp revenue under the Act, the procedure prescribed by the Act must be strictly followed.<sup>3</sup>

The language of the Act should be construed not in any *technical* but in a *popular* sense. By "popular sense" is meant that sense which the people conversant with the subject-matter with which the Act is dealing, would attribute to it.<sup>4</sup>

In cases of laws like Registration and Stamp Laws, unless some simple and definite rule explains in what case documents must be registered and stamped, the greatest confusion and hardship may arise.<sup>5</sup>

The maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void) applies to the Stamp Act also. But the principle stated

#### Preamble—NOTE 17

1. ('89) 13 Bom 449 (455) (FB), *Devachand v. Hirachand Kamaraj*.

('27) 14 AIR 1927 Mad 786 (788) : 104 Ind Cas 415, *Rama Rao v. Pitchayya*.

('11) 7 Nag L R 26 (29) : 10 Ind Cas 702 (DB), *Tukaram v. Sonaji*. (The object of the Stamp Act is not to exclude evidence or to enable parties to avoid their obligations on technical grounds, but to obtain revenue for the Government.)

('20) 7 AIR 1920 Pat 50 (56) : 5 Pat L Jour 660 : 58 Ind Cas 99 (DB), *Braj Mohan Singh v. Lachmi Narain*.

('21) 8 AIR 1921 Sind 80 (81) : 15 Sind L R 135 : 65 Ind Cas 37 (DB), *Naraindas v. Jasomal*. (The Stamp Act is a fiscal enactment the primary object of which is to prevent evasion of stamp duty.)

Also see Note 20.

2. ('76) 25 Suth W R 80 (80) (DB), *Luch meeput Singh v. Moshruuff Ali*. (Order to tenants to hold themselves responsible to a particular person to whom a release had been executed—No stamp necessary.)

3. ('82) 8 Cal 259 (262) : 10 Cal L R 365 (DB), *Empress v. Soddanund Mahanty*.

4. (1876) 1 Ex D 242 (248) : 45 L J Q B 465 : 34 L T 426 : 24 W R (Eng) 582, *Grenfell v. Inland Revenue Commissioners*.

5. ('78) 1 Mad 378 (380) ; 2 Ind Jur 168 (DB), *Narasayya Chetty v. Gurvappa Chetty*. ('97) 19 All 293 (294) : 1897 All W N 61 (F B), *Reference under S. 46 of Act No. I of 1879*. (A fiscal Act, which imposes the payment of duty on the subject ought to contain definitions of all terms which have to be considered in applying the Act, and which are not accepted as well recognized terms of universal application.)

Also see Note 20.



therein loses its force when the question is not so much whether a paper is liable to stamp as whether it is liable to stamp in one character or another, and it has no application at all where the words of the statute directly cover the case.<sup>6</sup>

See also Notes on S. 3 and S. 7.

As to whether provisions relating to *exemptions* from stamp duty must be construed strictly in favour of the Crown or the subject, see Note 16.

**17a. Objections relating to stamp.**—Stamp objections are the care of the Court and if they are raised, it is for the Court to decide whether they ought to be sustained, without regard to the *grounds* on which they are taken. As observed by Beaman, J.—“If the Court should hold that for any reason there is a good stamp objection, it matters not in the least whether this stands upon ground taken by counsel or not. Whether counsel hit upon the right reason or not is of no importance, provided there is a right reason.”<sup>1</sup> But in considering the objection the Court should be guided by the principle that unless the statute clearly imposes the liability for duty or enhanced duty, such liability does not arise.

**18. Reference to English law in construing the Act.**—On the principles discussed in Note 3, it will be open to the Courts in India to refer to English decisions on analogous provisions of the English Stamp Law in construing the Indian enactment, in cases of doubts and difficulties.<sup>1</sup> But caution is necessary in the use of English precedents and where the language of the Indian statute is clear, it ought to be given effect to untrammelled by English authorities.

**19. Previous Acts—Reference to.**—The general rule is that where the provisions of an enactment are clear and unambiguous in themselves, such provisions must be given due effect to without resorting to considerations based on the previous state of the law.<sup>1</sup> The leading authority on this point is *Bank of England v. Vagliano Brothers*.<sup>2</sup> In that case Lord Herschell observed as follows:

“I think the proper course is, in the first instance, to examine the language of the statute, and to ask what is its natural meaning, uninfluenced by any considerations derived by the previous state of the law, and not to start with enquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.”

6. ('07) 9 Bom L R 1034 (1037, 1038), *R. D. Sethna v. Mirza Mahomed*. (Held the maxim was not applicable in this case as the question was whether the deed was a pronote or a bond.)

Preamble—NOTE 17a

1. ('07) 9 Bom L R 1034 (1038), *R. D. Sethna v. Mirza Mahomed*.

Preamble—NOTE 18

1. ('89) 16 Cal 432 (435) (DB), *Raman Chetty v. Mahomed Ghose*.

Preamble—NOTE 19

1. †(1892) 1892 App Cas 481 (487): 61 L J P C 79: 67 L T 505, *Robinson v. Canadian Pacific Railway Co.*

†('21) 8 AIR 1921 Cal 397 (399): 48 Cal 556: 61 Ind Cas 82 (FB), *Nilmani Kar v. Raja Sati Prosad*.

('96) 23 Cal 563 (571, 572): 23 Ind App 18 (PC), *Narendra Nath v. Kamalabasini Dasi*.

('08) 35 Cal 34 (55): 6 Cal L Jour 273 (FB), *Kripa Sindhu v. Annada Sundari Debi*.

('14) 1 AIR 1914 Lah 214 (217): 1913 Pun Re No. 111: 22 Ind Cas 503 (FB), *Barru v. Lachman*.

[See also (1910) 2 K B 831 (836): 79 L J K B 1107: 103 L T 443, *Bristol Tramways, etc., Carriage Co., Ltd. v. Fiat Motors, Ltd.* (Where there is an express statutory enactment, that alone must be looked at, even though the section may have to some extent altered the prior common law.)

('21) 8 AIR 1921 Cal 40 (43): 48 Cal 161: 61 Ind Cas 107 (SB), *Killing Valley Tea Co. v. Secretary of State*. (Where the Court is called upon to construe an Act expressed in unambiguous language, it ought to put its own construction upon it, regardless of the construction that has been commonly put upon it.)]

2.\*(1891) 39 W R (Eng) 657 (667): 1891 App Cas 107: 60 L J Q B 145: 64 L T 353.



An appeal to the previous law will, however, be justified on some special ground such as the doubtful import or the previously acquired technical meaning of the language used in an enactment.<sup>3</sup>

The principle of interpretation enunciated by Lord Herschell does not militate against the long established rule of construction that in regard to the construction of any particular Act, recourse may and ought to be had to other Acts of similar scope on similar subjects and that Acts which are *in pari materia* are to be taken together as forming one system.<sup>4</sup>

Where the language of a particular section of a statute has been interpreted by the Courts and that language has been reproduced by the Legislature in the new Act, the Legislature must be presumed to know the current of the judicial pronouncements, and the Court is entitled to assume that the judicial interpretation has been accepted.<sup>5</sup> On the other hand, where the Legislature entirely changes the language of the new statute from that of the old one, the change must be presumed to be indicative of a change of intention on the part of the Legislature.<sup>6</sup>

See also A. I. R. Commentaries on the Civil Procedure Code, 4th (1944) Edition, Preamble, Notes 7 and 8.

**19a. Acts in pari materia.**—For construing the section in one Act, it is sometimes useful to call in aid the language used by the same Legislature in other Acts dealing with the same subject.<sup>1</sup> In *Rex v. Loxdale*,<sup>2</sup> Lord Mansfield laid down

3. \* (1891) 39 W R (Eng) 657 (667) : 1891 App Cas 107 : 60 L J Q B 145 : 64 L T 353, *Bank of England v. Vagliano Brothers*.

† (1892) 1892 App Cas 481 (487) : 61 L J P C 79 : 67 L T 505, *Robinson v. Canadian Pacific Railway Co.*

† ('21) 8 AIR 1921 Cal 397 (399) : 48 Cal 556 : 61 Ind Cas 82 (FB), *Nilmani Kar v. Raja Sati Prosad*.

('08) 35 Cal 34 (55) : 6 Cal L Jour 273 (FB), *Kripa Sindhu v. Annada Sundari Debi*.

(1870) L R 1 C C R 248 (252) : 22 L T 728 : 18 W R (Eng) 956, *R. v. Buttle*.

('33) 20 AIR 1933 Pat 435 (437) : 12 Pat 665 : 145 Ind Cas 421 (SB), *Mahadeo Ram v. Mohan Vikram*.

(1904) 2 K B 859 (863) : 73 L J K B 972, *Rex v. Abrahams*.

('14) 1 AIR 1914 Lah 214 (217) : 1913 Pun Re No. 111 : 22 Ind Cas 503 (FB), *Barru v. Lachman*.

('02) 25 Mad 457 (499) : 12 Mad L Jour 208 (DB), *Bell v. Municipal Commissioners, Madras*.

[See also ('26) 13 AIR 1926 Mad 1038 (1039) : 49 Mad 903 : 97 Ind Cas 993 (FB), *Board of Revenue, Madras v. Moopanna Somarazu*. (The cases decided under an Act which is repealed and is no longer in force cannot be treated as authorities, nevertheless they are useful as a guide as to the construction to be placed upon the Act which is in force in its place.)]

4. See Note 19a. See also Note 13.

5. † ('29) 16 AIR 1929 All 625 (630) : 52 All 11 : 118 Ind Cas 17 (FB), *Kayastha Co. Ltd. v. Sitaram Dubey*.

(1893) 1 Q B 25 (28) : 67 L T 655, *Jay v. Johnstone*. (Where the Legislature uses in an Act a legal term which has received judicial

interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted.)

('15) 2 AIR 1915 Cal 339 (340) : 43 Cal 103 : 30 Ind Cas 420 (DB), *Nagendra Mohan v. Pyari Mohan*.

(1870) 5 Ch App 703 (706) : 23 L T 289 : 18 W R (Eng) 1056, *Ex parte Campbell*.

(1884) 15 Q B D 403 (405) : 54 L J Q B 400 : 53 L T 52, *Barlow v. Teal*.

(1857) 120 E R 20 (28) : 8 El & Bl 54 (73) : 5 W R (Eng) 554 : 29 L T (O S) 155, *Mansell v. R.*

[See also (1845) 5 Moo P C 130 (141) : 13 E R 439 : 70 R R 19, *Casement v. Fulton*. (It is certainly to be wished, that in framing statutes, the same words should always be employed in the same sense, and that the introduction of new terms, in dealing with the same matter, should be avoided.)]

See also Note 1.

6. (1871) 6 Q B 411 (416, 417) : 24 L T 387, *R. v. Price*.

('14) 1 AIR 1914 Sind 11 (12) : 8 Sind L R 215 : 28 Ind Cas 105 (DB), *Farid Imambux v. Piru Kouro*.

#### Preamble—NOTE 19a

1. † ('10) 34 Bom 316 (319) : 5 Ind Cas 862 (DB), *In re Shivalal Padma*.

('02) 25 Mad 457 (500) : 12 Mad L Jour 208 (DB), *Bell v. Municipal Commissioners, Madras*.

See also Maxwell, *Interpretation of Statutes*, 5th Edn., page 54.

See also Halsbury, *Laws of England*, Vol. 27, para. 251.

2. \* (1758) 97 E R 394 (395).



the rule that "where there are different statutes *in pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system, and as explanatory of each other."

**20. Scope and object of Act.**—The Stamp Act is a fiscal enactment the primary object of which is to raise revenue for the state.<sup>1</sup> It seeks to realise this object by imposing a duty in respect of various documents executed by members of the public. This duty is made payable in the form of stamps sold by the Government (S. 10).

Though the raising of revenue for the state is the primary object of a Stamp-law, it also helps in the detection of forgery of documents. This happens in two ways :

1. *Firstly*—The stamp laws and regulations are often changed. So also the stamps issued at different times have different marks,. So, if an instrument purporting to be executed at a particular date bears a stamp which was only issued at a later date, there can be no difficulty in concluding that the instrument is a fabrication. An instance of such a case is given in the Introduction to Field's Law of Evidence. In that case, a conveyance purporting to have been executed in 1855 was engrossed on a stamp paper which, on examination, was found to bear the Royal Arms of England with V. R. and a Crown above. But this paper was not manufactured till 1859, when Queen Victoria assumed the Government of India. The paper which was previously in use bore only the Arms of the East India Company with the letters E. I. C. The conveyance was thus discovered to be a forgery.

2. *Secondly*—Even where there is no difference in the marks used on the stamps, stamp papers have to be purchased from licensed vendors who are required to keep a record of the names and addresses of persons purchasing stamps. In any case of suspicion, such records may be consulted and made use of.

The Stamp Act is *mainly* an adjective law. A breach of its provisions does not affect the *validity* of instruments but only their *admissibility* in evidence. Even in regard to this, the bar to the admissibility is generally not *absolute* but only qualified. Except in a few specified cases, documents, though not duly stamped, are made admissible on payment of penalty (S. 35). Further, once a document has been admitted in evidence such admission cannot be subsequently called in question except under certain circumstances (S. 36).

Though mainly an *adjective* law, the Act contains some *substantive* provisions. For instance, it contains provisions for the *punishment* of branches of the Act (See Chap. VII). Such provisions must be classed as substantive law.

Preamble—NOTE 20

1. ('46) 33 AIR 1946 Mad 437 (441) : 227 Ind. Cas 360 : ILR (1947) Mad 141 (D B) *Sethuraman v. Ramanathan*. (Object of Act is to protect revenue by excluding proof of the bargain by an instrument not duly stamped and not to alter terms of bargain between parties.)
- † ('27) 14 AIR 1927 Mad 786 (788) : 104 Ind Cas 415, *Rama Rao v. Pitchayya*.
- ('21) 8 AIR 1921 Sind 80 (81) : 15 Sind L R 135 : 65 Ind Cas 37 (DB), *Naraindas v. Jassomal*. (This object is attained by excluding unstamped documents from the evidence entirely and by not acting upon it. But

apart from this object, it may, in other respects, be considered in favour of the subject.)

('20) 7 AIR 1920 Pat 50 (56) : 5 Pat L Jour 660 : 58 Ind Cas 99 (DB), *Braj Mohan Singh v. Lachmi Narain*.

('11) 7 Nag L R 26 (29) : 10 Ind Cas 702 (DB), *Tukaram v. Sonaji*. (Object of the Stamp Act is not to exclude evidence or to enable parties to avoid their obligations on technical grounds, but to obtain revenue for the Government.)

('85) 8 Mad 532 (538) (FB), *Reference under Stamp Act, 1879, Section 46*.

Also see Note 17.



Again, under S. 7 a contract for sea-insurance shall not be *valid* unless it is expressed in a sea-policy. This is another instance of a substantive provision in the Act.<sup>2</sup>

See also Note 2 on S. 7.

#### Desirability of certainty in Stamp Laws.

In the case of laws like the Registration and Stamp Laws, unless some simple and definite rule explains in what cases documents must be registered and stamped, the greatest confusion and hardship may arise.<sup>3</sup>

21. Territorial application of Act.—See Section 1, Note 2.

22. “Consolidate and amend.”—“The very object of consolidation” said Lord Watson in *Administrator General of Bengal v. Premlal Mullick*<sup>1</sup> “is to collect the statutory law bearing upon a particular subject, and to bring it down to date, in order that it may form a useful code applicable to the circumstances existing at the time when the consolidating Act was passed.”

In the case of a consolidating statute, therefore, the construction must be not with reference to the circumstances existing at the time of the preceding Acts but in relation to those existing at the time of the consolidating Act.<sup>2</sup> But the provisions of a mere consolidating Act, which does not profess to amend or alter the provisions of the Acts consolidated, should be given the same effect as was given to the corresponding provisions of the previous Acts.<sup>3</sup> Where there are ambiguous expressions in a consolidating Act, regard may be had to previous Acts *in pari materia* for the purpose of interpreting those expressions.<sup>4</sup>

The essence of a code is to be exhaustive on the matters in respect of which it declares the law and it is not the province of the Judge to disregard or go outside the letter of the enactment according to its true construction.<sup>5</sup>

The Stamp Act, as its preamble shows, is an Act intended to consolidate and amend the law relating to stamps.. The Act has been described as an “elaborate Act”.<sup>6</sup>

23. Instruments liable to stamp duty.—An instrument is defined in S. 2 (14). There is no liability to stamp duty unless there is an *instrument* within the above definition. But it is not *all* instruments that are liable to stamp duty. It is only the instruments which are *specified* as being chargeable with duty that require to be stamped.<sup>1</sup> Section 3 declares what instruments are chargeable with duty. These

2. ('25) 12 AIR 1925 P C 83 (84): 52 Cal 408: 52 Ind App 126: 86 Ind Cas 545 (PC), *Surajmull Nagoremull v. Triton Insurance Co.* (The enactment is prohibitory. It is not confined to affording a party a protection of which he may avail himself or not as he pleases. It is not framed solely for the protection of the revenue and to be enforced solely at the instance of the revenue officials, nor is the prohibition limited to cases, for which a penalty is exigible.)

3. ('78) 1 Mad 378 (380): 2 Ind Jur 168 (DB), *Narasayya Chetty v. Guruvappa Chetti*. Also see Note 17.

#### Preamble—NOTE 22

1. ('95) 22 Cal 788 (798): 22 Ind App 107 (PC).  
2. ('95) 22 Cal 788 (798): 22 Ind App 107 (PC), *Administrator General of Bengal v. Premlal Mullick*.

3. (1890) 25 Q B D 183 (190, 192): 59 L J Q B 355: 63 L T 405: 38 W R (Eng) 565, *Mitchell v. Simpson*.

4. (1904) 2 K B 859 (863): 73 L J K B 972, *Rex v. Abrahams*.

5. ('02) 29 Cal 707 (715): 29 Ind App 196 (PC), *Gokul Mandar v. Padmanund Singh*.

6. ('02) 25 Mad 752 (764) (DB), *Reference under Stamp Act, Section 57*.

#### Preamble—NOTE 23

1. See ('76) 1 Mad 378 (380): 2 Ind Jur 168 (DB), *Narasayya Chetty v. Guruvappa Chetti*. (In the case of laws like the Registration and Stamp laws, unless some simple and definite rule explains in what cases documents must be registered and stamped, the greatest confusion and hardship may arise.)



instruments are enumerated in Sch. 1. Though these cover a wide range, the list is not exhaustive and there are some instruments which do not require to be stamped. For instance, *wills* do not require a stamp.

For a full discussion of the subject, see S, 3 and Notes thereon.

24. **Wills—Liability to stamp duty.**—See Section 3 Note 8.

24a. **Exemption from stamp duty.**—See Note 10 on Section 3.

25. **Determination of nature of instrument for purposes of stamp duty.**—See Note 12 on Section 3.

26. **Stamp duty is payable on instrument and not on transaction.**—What the Stamp Act deals with is not the bargain which arises out of the consent of the parties, but the instrument which records that bargain. The stamp duty is on the *instrument* as it stands and not on the *transaction*.<sup>1</sup> Hence where there is no instrument but only a verbal transfer, the transfer does not require stamp duty.<sup>2</sup> So, in *Commissioners of Inland Revenue v. Angus*,<sup>2a</sup> Lord Esher, M. R., observed as follows :

“The first thing to be noticed is, that the thing which is made liable to the duty is an ‘instrument’. If a contract of purchase and sale, or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument, the case is not within the section, and no tax is imposed. It is not the transaction of purchase and sale which is struck at ; it is the instrument whereby the purchase and sale are effected which is struck at. And if anyone can carry through a purchase and sale without an instrument, then the Legislature have not reached that transaction.”

Generally speaking, a document which merely *recites* a past transaction is not to be treated as one expressing or embodying the transaction for purposes of the Stamp Law.<sup>3</sup> But in considering whether an instrument merely *recites* a past

#### Preamble—NOTE 26

1. (1909) 1909 App Cas 633 (639) : 79 L J P O 5 : 101 L T 354, *Minister of Stamps v. Townend*.

(1900) 1 Q B 310 (319), *Muller and Co's Margarine Ltd., v. Inland Revenue Commissioners*.  
†('35) 22 AIR 1935 Lah 567 (569) : 17 Lah 1 : 158 Ind Cas 234 (SB), *Nanak Chand v. Fattu*. (In considering whether a document is governed by Art. 1, Stamp Act or the proviso, it is the document as it stands and not the bargain to which it refers, which has been made chargeable to stamp duty. The duty is on the instrument and not on the transaction.)

(1899) 81 L T 633 (637) : 48 W R (Eng) 303, *Garnett v. Inland Revenue Commissioners*.  
(44) 31 AIR 1944 Bom 325 (327) : ILR (1944) Bom 696; 221 Ind Cas 147 (SB), *Superintendent of Stamps, Bombay v. Breul & Co*.

(33) 20 AIR 1933 Lah 240 (240) : 141 Ind Cas 569, *Rupchand v. Beli Ram*.

(1927) 2 K B 465 (473), *Midland Bank v. Inland Revenue Commissioners*.

2. (1909) 1909 App Cas 633 (639) : 101 L T 354 : 79 L J P O 5, *Minister of Stamps v. Townend*. (Hence a verbal gift is not liable to stamp duty.)

†('45) 32 AIR 1945 Mad 138 (139) ILR (1945) Mad 539 (FB), *Prince of Arcot Endowment, Trichinopoly v. Arunachalam Pillai*. (Oral lease—Application to landlord for granting

lease to applicant on terms embodied in application—*Landlord orally letting out property to applicant on terms embodied in application*. Application is not lease and no stamp duty is payable.)

2a.(1889) 23 Q B D 579 (589) : 61 L T 832 : 38 W R (Eng) 3.

Also see S. 2 (10) Note 14.

3. ('35) 22 AIR 1935 Lah 567 (569) : 17 Lah 1 : 158 Ind Cas 234 (SB), *Nanak Chand v. Fattu*. (Mere entry or memorandum of transaction of purchase of goods on credit in *bahi* of seller is neither “agreement” nor “acknowledgment of debt” and is not liable to stamp duty.)

(18) 5 AIR 1918 Lah 354 (355) : 1918 Pun Re No. 115 : 44 Ind Cas 261 (SB), *Rustomji v. Emperor*. (Letter reciting an earlier sale and earlier receipt of consideration money for that sale is not a conveyance.)

(32) 19 AIR 1932 Sind 73 (75) : 26 Sind L R 29 : 139 Ind Cas 95, *Tyabali A. Mandviwalla v. Parpatibai*. (Letter given by mortgagors confirming an equitable mortgage which has already been effected does not require to be stamped.)

Note :—The definition of a “settlement” in S. 2 (24) contains an exception to the above proposition. Under that clause, an instrument merely recording the terms of a prior oral settlement is a “settlement” for purposes of stamp duty.



transaction or itself embodies the transaction, the substance of the instrument and not merely its *form* must be looked at. Hence, the mere use of words in the *past tense* will not show that the instrument merely refers to a past and not a present transaction. The levy of duty on such an instrument will, therefore, be not a levy of duty on the transaction.<sup>4</sup>

In determining what is the proper amount of stamp duty chargeable on a deed the Court must look to the substance of the transaction as disclosed by the whole deed and not merely to the language of the operative part or parts of the instrument.<sup>4a</sup>

It is open to the parties to split up a transaction and have two or more separate and independent instruments in respect of each part of their bargain. In such a case, each instrument must be considered by itself and not in the light of the other instruments. Stamp duty is payable on each instrument taken by itself and not on the *transaction* composed of the different instruments.<sup>5</sup>

Where a security-deed is executed, the stamp duty becomes payable at once although at the moment it is executed there has been no money lent or advanced.<sup>6</sup> This also shows that it is the *instrument* and not the *transaction* that is chargeable with duty. Where the parties complete a transaction without any instrument, they incur no liability under the Act. Conversely, where they execute an instrument with a view to a certain transaction, the fact that the transaction fails to come off does not obviate the need to pay stamp duty.

27. Alteration of document.—See Note 2 on Section 14.

28. Invalid document.—Whether liable to stamp duty.—See Section 3 Note 4.

29. Instruments executed outside British India—Applicability of Act.—See Section 3.

29a. Classification of duties.—A reference to Sch. I will show that the stamp duty payable under this Act on instruments is either fixed or *ad valorem*. In other words, stamp duties under this Act are chargeable on either of two bases :

(a) Fixed duties are imposed on documents satisfying a given description or definition, e.g., a receipt for an amount exceeding Rs. 20, which is liable to a fixed stamp duty of one anna irrespective of the amount acknowledged (Art. 53).

(b) *Ad valorem* duties dependent on the amount or value of the consideration set forth in the instrument, as a bond, conveyance, etc.

4. ('35) 22 AIR 1935 Lah 122 (123). *Mt. Miraj Begum v. Seth Ram Parshad & Sons*. (The documents which are drafted for effecting sales and mortgages of immovable property are always worded in such manner as to show that the transfer had already taken place. Hence merely on this account it cannot be argued that these documents do not require stamp and registration.)

4a. ('96) 12 Cal 383 (386) (FB), *In re Menglas Tea Estate*. (The question was whether the transaction was a conveyance or a transfer of a lease.)

5. (1848) 2 Car & Kir 810 (813) : 175 E R 340, *Hankins v. Clutterbuck*. (One A placed his nephew B as an apprentice with C a surgeon, for the term of five years. The consideration stated in the indenture was the sum of £99-19s., and the indenture bore the

proper stamp for that amount which mounth had been paid. But it further appeared that contemporaneously with the indenture a written agreement was entered into between A and C by which it was stipulated that a further sum of £150 should be paid by A to C in consideration whereof C agreed to provide the apprentice with his board during the five years of the apprenticeship. The indenture of apprenticeship was offered in evidence—*Held* that the deed was receivable in evidence. The statute was not meant to fetter any one in his dealings; and whilst the particular matter of contract is in *fieri*, the parties may separate the amount of consideration if they think fit. If a party so acted as not to be hit by the Stamp Act he had a right to do so.)

6. (1908) 1 K B 865 (891) : 77 L J K B 746 : 98 L T 405, *Suffield v. Inland Revenue Commissioners*.



29b. **Ad valorem and fixed duties.**—See Note 29a.

30. **Calculation of ad valorem duties, rules as to.**—Where *ad valorem* duties are chargeable the respective articles in Sch. I indicate the basis on which the *ad valorem* duty payable in each case is to be calculated. The general rules as to the *mode of valuation* to be followed are contained in Ss. 20 to 28 and a reference may be made to those sections and the Notes thereon.

The general principles as to valuation not contained in any specific provisions of the Act are considered in the Notes on S. 27. Here one general principle may be stated, namely, that the value *as stated* in the document will be the value for purposes of stamp duty. Because, the principle of the Act is that an instrument is to be taxed *as it stands*. Any attempt to evade the proper stamp duty by omitting to state or erroneously stating the value will be an *offence* under S. 64. But the validity or admissibility of the document will not be affected. For fuller discussion of this aspect of the subject, see Notes on Ss. 27 and 64.

31. **Instrument not duly stamped—Effect.**—See Section 35 and Notes thereon.

32. **Instrument not duly stamped—Suit on original cause of action.**—See Note 12 on Section 35.

33. **Impounding of instruments not duly stamped.**—See Section 33 and Notes thereon.

34. **Evasion of stamp-duty.**—So long as the letter of the law is adhered to, the Court cannot object to any apparent evasion of stamp-duty.<sup>1</sup> As observed by Kelly, C. B., in *Wale v. Commissioners of Inland Revenue*,<sup>2</sup> “if you can evade the rights of the Crown by keeping yourself out of the operation of a statute imposing a tax upon the public you are perfectly at liberty to do so.” Similarly, in *Hankins v. Clutterbuck*,<sup>3</sup> Baron Rolf said; “If the party so acted as not to be hit by the Stamp Act, he had a right to do so.”

Thus, it is open to a person to effectuate a transaction without any instrument at all and thereby avoid stamp duty. For it is only where there is an *instrument*, that the liability to stamp duty arises. So also, it is the instrument as it stands and not the transaction actually intended by the parties that is the subject of duty. (See Note 26.)

It must be noted that in such cases a party merely keeps out of the operation of the statute. Such cases must be distinguished from another type of evasion which consists in an attempt to pass off a state of things which falsely represents itself as something which it is not.<sup>4</sup> As observed by Maxwell, in his *Interpretation of Statutes*,<sup>5</sup> “it is essential not to confound what is actually or virtually prohibited or enjoined by the language, with what is really beyond the enacting part, though it may be within the policy of the Act.” In the former case, the evasion will not be tolerated and the Court will pierce through the veil hiding the fraud. Such cases are made punishable under S. 64 of the Act.

#### Preamble—NOTE 34

1. ('66) 1866 Pun Re (S C C R) No. 5, page 4 (4) (DB), *Reference by Judge, Small Cause Court, Amritsar*.

(1879) 4 Ex D 270 (277) : 48 L J Q B 574 : 41 L T 165 : 27 W R (Eng) 916, *Wale v. Commissioners of Inland Revenue*.

[See also ('83) 1883 Pun Re (Cr) No. 31, page 78 (79) (DB), *The Empress v. Maya Mal*. (Unless the prosecution shows that the instrument is of the kind which the Stamp Act

requires to be stamped, the person who executes it cannot be said to have committed a breach of the Act.)]

Also see S. 68, Note 2.

2. (1879) 4 Ex D 270 (277) : 48 L J Q B 574 : 41 L T 165 : 27 W R (Eng) 916.

3. (1848) 2 Car & Kir 810 (813) : 175 E R 340.

4. Maxwell, *Interpretation of Statutes*, 5th Edn., 1912, page 185.

5. Maxwell, *Interpretation of Statutes*, 5th Edn., 1912, page 195.



35. **Presumption as to sufficiency of stamp-duty.**—Section 89 of the Evidence Act lays down that the Court shall presume that every document called for and not produced after notice to produce was stamped in the manner required by law. So, a presumption as to sufficiency of stamp-duty can be drawn in cases where S. 89 is applicable. But such a presumption may be raised in other cases also. Thus, where from the certified copy of an instrument it was not possible to determine whether the instrument was properly stamped or not, it was held by their Lordships of the Privy Council that it might be rightly presumed that the officer before whom it was presented satisfied himself that it was properly stamped.<sup>1</sup>

36. **Variation of terms by subsequent instruments.**—See Note 3 on Section 14.

37. **Kinds of stamps.**—See Section 10 and Notes thereon.

38. **Act applicable in determining duty or penalty payable.**—The duty chargeable on a document must be decided with reference to the Act in force at the date of execution of the document, but the penalty leviable is to be determined by reference to the Act in force at the time of its presentation for being used as evidence.<sup>1</sup> See also Note 15.

39. **Stamp Act and Registration Act.**—Though the Stamp Act and the Registration Act are not strictly *in pari materia* they are so in a large measure. The two Acts may therefore be read together and the definitions contained in one may be adopted for the purpose of construing the other Act.<sup>1</sup>

40. **Stamp Act and Court-fees Act.**—See Note 41.

41. **Judicial and non-judicial stamps.**—This Act deals with *non-judicial* stamps. There is another class of stamps which are known as court-fee stamps or judicial stamps and which are required to be used in judicial and other proceedings. They are dealt with under the Court-fees Act. The stamps to be used under the Court-fees Act are a special kind of stamps issued under Rules under that Act.

There is a difference in the circumstances under which stamps are required under the two enactments. Under the Court-fees Act the use of stamps is contemplated only on certain occasions connected with the institution of proceedings in Courts or making applications to Courts or public offices or the obtaining of certain documents from Courts and offices. (See Ss. 4 and 6 of the Court-fees Act.) But the scope of the Stamp Act is much wider. Duty is payable under that Act whether or not a matter goes before a Court or public authority (S. 3). (See A. I. R. Commentaries on the Court-fees Act, 1st (1944) Edn., S. 1, Note 12.)

It will be noticed that the articles in Sch. I which enumerate the instruments chargeable with duty under this Act do not include decrees and orders of Courts.

But there are some cases in which a stamp under this Act is necessary in respect even of *judicial* proceedings. Such a case is that of a final *decree* for partition which is included in the definition of an *instrument* of partition under S. 2 (15) and is

Preamble—NOTE 35

1. ('16) 3 AIR 1916 P O 41 (43) : 38 All 494 : 43 Ind App 264 : 39 Ind Cas 11 (PC), *Ahmad Raza v Syed Abid Husain*.

Preamble—NOTE 38

1. ('82) 5 Mad 394 (396) : 7 Ind Jur 16 (FB), *Reference under Stamp Act, S. 46*. (Penalty payable under S. 37 (b) of the Act of 1879 corresponding to S. 35 (a) of the present Act.)

Preamble—NOTE 39

1. ('28) 15 AIR 1928 Bom 553 (554) : 53

Bom 1 : 112 Ind Cas 758 (DB), *In re Maneklal Manilal*. (Meaning of agreement to lease as applicable to Registration Act applied under the Stamp Act.)

('14) 1 AIR 1914 Bom 55 (58, 59) : 38 Bom 576 : 54 Ind Cas 730 (DB), *Chandrashankar Pranshanker v. Bai Magan*. (The definition of "composition deed" introduced for the first time in 1869 in Sch. I Art. 22 of the Stamp Act may be adopted for purposes of S. 17 of the Registration Act in which the same word occurs.)



chargeable with stamp-duty as such. The use of *court-fee* stamps instead of non-judicial stamps in such a case will not satisfy the law and the Court will refuse to execute a decree for partition engrossed on a court-fee stamp although it was purely by mistake that court-fee stamps instead of non-judicial stamps came to be furnished.<sup>1</sup>

Where a petition is presented to the Court alleging that the parties have compromised the suit on certain terms and praying for a decree to be passed in terms of the compromise, the petition is only liable to a *court-fee* under Sch. II Art. 1 of the Court-fees Act and not to any *stamp duty* under this Act.<sup>2</sup> The reason is that the petition does not itself amount to an *agreement* or other instrument enumerated in Sch. I but merely *recites* as something already concluded that there has been an agreement between the parties.

42. **English Acts.**—The Stamp Law of British India is in most respects modelled upon the English Stamp Law. This is contained in a large number of statutes, the important ones being (1815) 55 Geo. III, c. 184; (1850) 13 and 14 Vic., c. 97; (1870) 33 and 34 Vic., c. 97 and (1891) 54 and 55 Vic., c. 39.

As to how far the decisions on the English Acts may be accepted as guidance in interpreting the Indian law, see Note 18.

## CHAPTER I.

### PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Indian Stamp Act, 1899.

(2) It extends to a[all the Provinces of India], inclusive of b[\* \*] c[\* \*], the Santhal Parganas, and the Pargana of Spiti; and

(3) It shall come into force on the first day of July, 1899.

a. Substituted for "the whole of British India" by I. O.

b. The words "Upper Burma" were *repealed* by S. 3 and Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

c. The words "British Baluchistan" were omitted by A. C. A. O.

### \* Prior Acts—

#### Act I of 1879 : S. 1.

Short title.

1. This Act may be called the Indian Stamp Act, 1879.

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force on the first day of April, 1879.

#### Preamble—NOTE 41

1. ('10) 7 Ind Cas 94 (96) (DB) (Cal), *Raft-ud-din v. Latif Ahmed*.

2. ('85) 8 Mad 15 (17) (FB), *Reference under Stamp Act, Section 46*.

Also see Section 3, Note 9.



### Provincial Amendments.

The Indian Stamp Act, 1899, has been amended in its application to—

#### BENGAL

By the Bengal Stamp (Amendment) Act III of 1922 ; the Indian Stamp (Bengal Amendment) Act, XII of 1935 and the Bengal Expiring Laws Act, IV of 1938.

#### BIHAR

By the Bihar Stamp (Amendment) Acts, VI of 1937 and IV of 1938, Bihar Stamp (War Surcharge Amendment) Act, X of 1943 and Bihar Entertainments Duty, Court-Fees and Stamps (Surcharge Amendment) Act, XXV of 1948.

#### BOMBAY

By the Bombay Finance Act, II of 1932, as amended from time to time by various Acts including Bombay Finance (Amendment) Act, II of 1949.

#### CENTRAL PROVINCES & BERAR

By the Central Provinces and Berar Indian Stamp (Amendment) Act, VI of 1939, as amended from time to time by various Acts including the Central Provinces and Berar Indian Stamp (Amendment) Act, VI of 1948.

#### COORG

By the Coorg Stamp (Amendment) Act, II of 1935.

#### EAST BENGAL

By the Stamp Duty (Extension to Sylhet) Ordinance, 1948 as kept in force by the East Bengal Ordinances Temporary Enactment and Re-enactment Act, 1948 and the Stamp Duty (Extension to Sylhet) Act, 1949. Sections 2 and 3 of the Stamp Duty (Extension to Sylhet) Act, 1949 (East Beng. Act XII of 1949) are as follows :—

“2. Notwithstanding anything contained in any other law for the time being in force, the Indian Stamp Act, 1899, as amended by Bengal Acts from time to time, and all the rules framed thereunder, shall apply to the district of Sylhet.

3. All proceedings commenced under the Indian Stamp Act, 1899, as applied to Assam and the rules made thereunder shall be continued and be deemed to have been commenced under the corresponding provisions of the Indian Stamp Act, 1899, as amended by Bengal Acts from time to time, and the rules made

#### Act XVIII of 1869 : S. 1.

*Short title.*  
*Extent of Act.*  
*Commencement of Act*

1. This Act may be called the General Stamp Act, 1869.  
It extends to the whole of British India.  
And it shall come into force on the 1st day of January 1870

#### Act X of 1862 : S. 57.

*(An Act to consolidate and amend the law relating to Stamp Duties.)*

*Commencement of Act.*

LVII. This Act shall come into force on the 1st day of June 1862.

#### Act XXXVI of 1860 : S. 42.

*(An Act to consolidate and amend the law relating to Stamp Duties.)*

*Commencement of Act.*

XLII. This Act shall come into force from the 1st of October 1860.

[Note :—The full texts of these prior Acts have been given in Appendix I.]



thereunder and any appointment made under the former Act and the rules made thereunder shall for the purposes of the said proceedings, be deemed to have been made under the latter Act and the rules made thereunder as if the latter Act and the rules made thereunder were in operation when the said proceedings were commenced or such appointment was made."

**MADRAS**

By the Madras Stamp (Amendment) Act, VI of 1922, as amended from time to time by various Acts including the Madras Stamp (Increase of Duties) Act, XVI of 1943.

**BANGANAPALLE & PUDUKKOTTAI**

In Section I, the word 'and' at the end of sub-section (2), and sub-section (3) shall be omitted.—*G.O.M. No. 1872, Revenue, 5-8-1948 and G.O.Ms. No. 1722, Revenue, 16-11-1948.*

**HIMACHAL PRADESH**

Omit clauses (2) and (3) of Section I.—*Himachal Pradesh (Application of Laws) Order, 1948 [25-12-1948].*

**ORISSA**

By the Orissa Stamp (Amendment) Act, VI of 1943. Section 2 of the said Orissa Act runs as follows :—"2. *Application of Indian Stamp Act, 1899, to Orissa. Repeal of Madras Stamp (Amendment) Act, 1922.*—The Indian Stamp Act, 1899, (hereinafter referred to as the said Act), shall, in its application to the Province of Orissa, be amended in the manner hereinafter provided; and the Madras Stamp (Amendment) Act, 1922, in so far as it applies to Orissa, shall, save in so far as it affects the amount of duty chargeable in respect of bills of lading, be repealed."

**PUNJAB**

By the Indian Stamp (Punjab Amendment) Act, VIII of 1922, as amended from time to time by various Acts including the Punjab Stamp (Amendment) Act, I of 1935.

**SIND**

By the Bombay Finance (Sind Amendment) Act, I of 1938, the Indian Stamp (Sind Amendment) Act, XII of 1938, and the Bombay Finance (Sind Amendment) Act, II of 1943. Section 2 of the Sind Act, I of 1938, is as follows :—"2. *Amendment of S. 2 of Bombay Act, II of 1932.*—(1) The provisions of Part II of the Bombay Finance Act, 1932, hereinafter called the said Act, relating to the levy of duty on consumption of electrical energy, the amendments made in the Court-fees Act, 1870, in its application to the Province of Sind by the provisions of Part III of the said Act, and save in so far as such amendments relate to Art. 14 of Sch. I of the Indian Stamp Act, 1899, the amendments made in that Act in its application to the Province of Sind by the provisions of Part IV of the said Act, shall continue in force until amended or repealed and, subject as aforesaid, the provisions of sub-s. (3) of S. 2 of the said Act shall cease to have effect.

(2) Nothing in this Act or in the Bombay Finance Act, 1932, shall affect the rate of stamp duty chargeable under the Indian Stamp Act, 1899, in respect of a Bill of Exchange payable more than one year after date or sight."

**UNITED PROVINCES**

By the United Provinces Stamp (Amendment) Act, III of 1936, as amended from time to time by various Acts including the Indian Stamp (United Provinces Amendment) Act, XVII of 1948.

**WEST PUNJAB**

By the Indian Stamp (West Punjab Amendment) Act, XIV of 1948.

*Note.*—These Provincial amendments have been given in their appropriate places along with the provisions in the main Act.



## Synopsis

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| <ol style="list-style-type: none"> <li>1. Title of the Act.</li> <li>2. Territorial application.</li> <li>3. Scheduled Districts.</li> <li>4. "All the Provinces of India." See Note 2.</li> <li>5. "Inclusive of the Santhal Parganas and the Pargana of Spiti." See Note 3.</li> </ol> | <ol style="list-style-type: none"> <li>6. Applicability of Act to Berar. See Note 2.</li> <li>7. Previous Stamp Laws in India. See Preamble Note 16a.</li> <li>8. English Stamp Laws. See Preamble Note 42.</li> </ol> |
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1. Title of the Act.—As to the value of the title of an Act in interpreting the Act, see NOTE 4 on Preamble.

2. Territorial application.—This Act, as provided in sub-s. (2) of this section, extends to all the Provinces of India, inclusive of the Santhal Parganas, and the Pargana of Spiti. Formerly, the Act was stated to extend to the "Whole of British India". After India became independent and Dominion of India was established in 1947, the expression "the whole of British India" was replaced by the words "all the provinces of India. By cl. 43 of S. 3 of the General Clauses Act, 1897 as amended by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, the expression "the Provinces" has been defined as follows: " 'the Provinces' shall mean, as respects any period before the establishment of the Dominion of India all territories for the time being comprised within British India, and as respects any period thereafter, all territories for the time being comprised within the Governors Provinces and the Chief Commissioners' Provinces."

The expression "British India" has been defined by S. 3 (7) of the General Clauses Act, 1897, as amended by the India (Adaptation of Existing Laws) Order, 1947, as follows :

" 'British India' shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty's dominions which were for the time being governed by His Majesty through the Governor-General of India or through any Governor or officer subordinate to the Governor-General of India, and as respects any period after that date and before the date of the establishment of the Dominion of India means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian Law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar."

From the above definition it is clear that the expression "British India" in this section did not include Berar. But so much of the provisions of the Stamp Act as relates to matters with respect to which the Central Legislature has power to make laws has been extended to Berar by S. 2 of the Berar Laws Act, 1941 (IV of 1941). By the Berar Laws (Provincial) Act, 1941 (C. P. Act XV of 1941) a similar provision has been made with respect to matters as to which the *Provincial* Legislature has power to make laws.

The Stamp Act has been extended to many places which though outside British India were under British administration, by notifications under Ss. 4 and 5 of the Foreign Jurisdiction and Extradition Act (XXI of 1879) and the Indian (Foreign Jurisdiction) Order in Council, 1902, as amended in 1937, such as Bangalore Cantonment, Baroda Cantonment, Mount Abu, the Kolhapur Residency, etc. See also Note 3.



**3. Scheduled Districts.**—For reasons of State several parts of British India were never brought within or were, from time to time, removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature. The Scheduled Districts Act (XIV of 1874) was passed with a view to remove the doubts that existed at that time as to the Acts in force in such parts.<sup>1</sup> These parts were known as the Scheduled Districts as all such parts were given in the first schedule to that Act and also in the sixth schedule to the Laws Local Extent Act (XV of 1874).

The present Stamp Act being very clear as to its local extent, it will apply to the "Scheduled Districts" which were clearly parts of British India. The Scheduled Districts Act does not apply to this Act, the same having been passed subsequent to the Scheduled Districts Act. Hence, no notification under that Act is necessary to make the Act applicable to the Scheduled Districts.<sup>2</sup>

In the case of a territory newly acquired by conquest or by cession from another power, the law of the country continues in force until altered by the Crown or Legislature.<sup>3</sup>

The Stamp laws which were in force in British India before the present Act were declared to be in force, in the Santhal Parganas by the Santhal Parganas Settlement Regulation, III of 1872, and in the Pargana of Spiti by the Spiti Regulation, I of 1873. The Present Act has now incorporated all these regulations by expressly providing that the Act will apply to all the Provinces of India inclusive of Santhal Parganas and the Pargana of Spiti. It may be noted here that the Santhal Parganas and the Pargana of Spiti had been declared to be Scheduled Districts of Bengal and the Punjab respectively in 1874 by the Scheduled Districts Act. But it does not seem to be clear as to why Santhal Parganas and in the Pargana of Spiti are *especially* mentioned in the present Act even though they were clearly included within the expression "British India".

Under S. 3 (a) of the Scheduled Districts Act, 1874, the Act has been declared in force in the Scheduled Districts of Ganjam, Vizagapatnam and East Godavary Districts. (See Notification No. 121, dated 25th April 1927, in the Fort St. George Gazette, 1927, Part I, p. 684.) But even irrespective of and before any such Notification this Act was applicable to such Tracts as the expression "British India" clearly included the Scheduled Districts.

The Act has been extended under Ss. 5 and 5A of the Scheduled Districts Act, 1874, with further modifications to the districts of the Khasi and Jaintia Hills, the Garo Hills, the Lushai Hills and the Naga Hills and the North Kachar Sub-division of the Kachar District, the Mikir Hill Tracts in the Sibsagar and Nowgong Districts and the Lakhimpur Frontier Tract. (See Notification No. 1541-F(a) of the 10th April 1930, in the Assam Gazette, 1930, Part II, p. 700.)

#### Section 1—NOTE 3

1. See Preamble to the Scheduled Districts Act (XIV of 1874).

('28) 15 AIR 1928 Mad 1181 (1181): 52 Mad 1: 115 Ind Cas 824 (FB), *Collector of Vizagapatnam v. Krishna Chandra*.

2. ('28) 15 AIR 1928 Mad 1181 (1181): 52 Mad 1: 115 Ind Cas 824 (FB), *Collector of Vizagapatnam v. Krishna Chandra*. (Indian Stamp Act of 1899 applies to the Agency tracts which are included in British India,

as defined in S. 3 (7), General Clauses Act, 1897. 18 Mad 227, Rel. on.)

NOTE.—Anyhow, there is a Government Notification of 1927 extending the Stamp Act to the Agency Tracts of Ganjam, Vizagapatnam and Godavari Districts.

3. (1836-37) 1 Moo Ind App 175 (271): 1 Moo P O 175 (PC), *Mayor of Lyons v. East India Company*.

('95) 19 Bom 680 (686) (DB), *Jalbhai Ardeshir Shet v. Louis Manoel*. (Island of Salsette conquered by British from Marathas—Law of succession applicable.)



The Act has been declared to be in force in the Angul District by the Angul Laws Regulation, 1936 (V of 1936) S. 3 and Schedule and in the Pargana of Manpur with modifications and restrictions under S. 2 of the Manpur Laws Regulation, II of 1926.

The Act is to be deemed not to extend or to have ever extended to the Arakan Hill District ; see the Arakan Hill District Laws Regulation, 1901 (II of 1901). By virtue of S. 4 (2) of the Chittagong Hill-tracts Regulation, 1900 (I of 1900), the Act is not in force in the Chittagong Hill-tracts.

The Scheduled Districts Act of 1874 has now ceased to be of effect. But it will not affect the continuing validity of any notification, appointment, regulation, direction or determination made thereunder and in force immediately before 1st April 1937, the date of the commencement of Part III of the Government of India Act, 1935.<sup>4</sup> Now, by virtue of S. 92 of the Government of India Act, 1935, no Act of the Federal Legislature or Provincial Legislature shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs.

4. "All the Provinces of India."—See Note 2.

5. "Inclusive of the Santhal Parganas and the Pargana of Spiti."—See Note 3.

6. Applicability of Act to Berar.—See Note 2.

7. Previous Stamp Laws in India.—See Preamble Note 16A.

8. English Stamp Laws.—See Preamble Note 42.

2. In this Act, unless there is something repugnant in the subject Definitions. or context,—

## SECTION 2 (General).

1. **Definitions.**—As a general rule of construction, words in an Act should receive their *ordinary and plain meaning* unless a contrary intention is apparent from the context. The object of a definition clause is, however, to declare that certain words used in the Act shall have the meaning given to them by the definition thereof.<sup>1</sup> The definition may include, in the connotation of the word defined, certain things which the Legislature, under certain circumstances, intends to include but which may not fall within the ordinary acceptance of the term.<sup>2</sup>

The meaning assigned to a word or expression by the interpretation clause is the meaning of the word wherever it occurs in the Act,<sup>3</sup> *unless there is anything repugnant in the subject or context.*<sup>4</sup>

4. See Government of India (Adaptation of Indian Laws) Order, 1937.

### Section 2 (General)—Note 1

1. ('86) 12 Cal 430 (433) (DB), *Umachurn v. Ajadannissa Bibee*.

('26) 13 AIR 1926 Sind 58 (61) : 25 Sind L R 345 : 91 Ind Cas 99 (FB), *Walter John Brooks v. Nee Barwick*.

2. ('11) 35 Bom 412 (417) : 11 Ind Cas 610 (612) (DB), *Emperor v. Braz. H. De Souza*.

('26) 13 AIR 1926 Sind 58 (61) : 25 Sind L R 345 : 91 Ind Cas 99 (FB), *Walter John Brooks v. Nee Barwick*.

3. ('86) 12 Cal 430 (433) (DB), *Umachurn v. Ajadannissa Bibee*.

('26) 13 AIR 1926 Sind 58 (61) : 25 Sind L R 345 : 91 Ind Cas 99 (FB), *Walter John Brooks v. Nee Barwick*.

4. ('16) 3 AIR 1916 Pat 133 (134) : 2 Pat L Jour 91 : 38 Ind Cas 964 (FB), *Manik Ram Ahir v. Emperor*. (Assam Labour and Emigration Act (1901)—If there was any repugnance between the meaning of the word "emigrate" as defined in the interpretation section with the subject or context in S. 64, the meaning would have to be modified accordingly, having regard to the scope and object of the section and the evil the law intended to prevent.)



In the case noted below,<sup>4a</sup> a question arose as to whether a certain instrument was a mortgage-deed within the definition in S. 2 (17) of this Act. In holding that the instrument fell within the definition, Derbyshire, C. J., observed as follows :

"I can see nothing in the subject-matter of the document itself or the context which is repugnant so as to prevent this document from being a mortgage-deed within S. 2, sub-s. (17)."

It is submitted with respect that when the section speaks of repugnancy in the subject or context, it refers to the subject-matter or context of the provision in the Act in which the expression defined may occur. Hence, to speak of repugnancy in the subject-matter or context of a *document* in this connection is confusing.

It is essential that every Act should contain definitions of all important terms occurring in the Act. This is all the more necessary in the case of fiscal Acts imposing liabilities on the subjects. In *Reference under S. 46 of Act No. I of 1879*,<sup>5</sup> a great difficulty was felt as the term "public officer" was not defined in the Stamp Act, and their Lordships had to decide the question with the help of Ss. 76 and 78 of the Evidence Act. Hence in that case Sir John Edge, C. J., observed : "A fiscal Act, which imposes a payment of duty on the subject, ought to contain definitions of all terms which have to be considered in applying the Act, and which are not accepted as well recognized terms of universal application."

In cases where a word is not defined in this Act but is defined in the General Clauses Act, 1897, that definition should be applied unless there is anything repugnant in the subject or context, inasmuch as S. 3 of that Act provides that the definitions given therein shall apply "in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context."

The definition of words given in Acts *in pari materia* may also be considered in the absence of their definitions in this Act and the General Clauses Act, 1897.<sup>6</sup> In *Chandrashankar v. Bai Magan*<sup>7</sup> it was held that the Stamp Act is in large measure *in pari materia* with the Registration Act and so the description of "composition-deed" given in the Indian Stamp Act (Art. 22) might be adopted for purposes of S. 17 of the Registration Act.

But a definition given in another statute not *in pari materia*,<sup>8</sup> or the incidents

('09) 2 Ind Cas 632 (632) (DB) (All), *Brij Mohan Lal v. Ram Sarup Singh*. (Definition of word "suit" in Limitation Act does not include an 'appeal'—But the word read with the context in S. 31, now repealed, clearly showed that it included for the purposes of that section an appeal.)

4a. ('37) ILR (1937) 2 Cal 486 (490) (FB), *In the matter of, Kamala Ranjan Ray*.

5. ('97) 19 All 293 (294) : 1897 All W N 61 (FB).

6. ('28) 15 AIR 1928 Bom 553 (554) : 53 Bom 1 : 112 Ind Cas 758 (DB), *In re, Maneklal Manilal*. (Though the Stamp Act and the Registration Act are not strictly *in pari materia*, the two Acts may be read together—Meaning of a agreement to lease as applicable to Registration Act, held applicable under the Stamp Act.)

See also Maxwell, *Interpretation of Statutes*, 5th Edn., (1912) pages 498 to 501 where it is

said as follows :—(1) "When the Legislature puts a construction on an Act, a subsequent cognate enactment in the same terms would, *prima facie*, be understood in the same sense. (2) When the same words appear in a subsequent Act *in pari materia*, the presumption arises that they are used in the meaning which had been judicially put on them ; and unless there be something to rebut that presumption, the new statute is to be construed as the old one was."

7. ('14) 1 AIR 1914 Bom 55 (58, 59) : 38 Bom 576 : 24 Ind Cas 730.

8. ('32) 19 AIR 1932 Pat 281 (283) : 139 Ind Cas 493, *Abdul Rauf v. Banarsi Lal*.

('08) 31 Mad 408 (412) : 18 Mad L Jour 349 (DB), *Mylapore Hindu Permanent Fund v. The Corporation of Madras*. (The Indian Companies Act cannot be properly resorted to to determine the meaning of words in the Municipal Act for the two Acts are not *in pari materia*.)



attached to the word by another statute<sup>9</sup> cannot be made applicable except so far as provided by the statute itself.<sup>10</sup>

It must be noted that under the Stamp Act various articles in the Schedule themselves contain description of the instruments intended to be covered. See, for instance, Art. 3 which explains what would be an adoption-deed. In such cases unless an instrument conforms to the description contained in the article, it would not be liable to duty. But the description in the article will not have the force of a 'definition' and will be only applicable for the purpose of the particular article in question.

2. Meaning of expressions, "means", "includes", "means and includes".—In this section, the legislature has used different expressions like "means," "includes," "means and includes" while defining various words. It is, therefore, necessary to know the special significance in which these expressions have been used.

The use of the word "includes" in a definition shows that it is in truth no definition.<sup>1</sup> In such cases it is only intended to be enumerative and not exhaustive.<sup>2</sup> The word "includes" is often used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute. When it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things, which the interpretation clause declares that they shall include.<sup>3</sup> This enlargement of meaning is, however, confined to the matters expressly mentioned in such a definition.<sup>4</sup> Where a word is defined as "including" certain things, others are not thereby necessarily excluded, as such definitions are not meant to be exhaustive.<sup>5</sup>

Sometimes even the word "include" is used as equivalent to the words "means and includes". It is so where from the context of the Act it is clear that it was not merely used for adding to the natural meaning of the word defined but was meant to be an exhaustive explanation of that word.<sup>6</sup>

9. ('86) 12 Cal 430 (433) (DB), *Umachurn v. Ajadannissa Bibee*. (Because lakheraj property is defined in the Road Cess Act, 1871, to be a tenure, it does not follow that all the interests and consequences attached by other Acts to tenures generally become annexed to lakheraj property.)

('26) 13 AIR 1926 Sind 58 (61): 25 Sind L R 345: 91 Ind Cas 99 (FB), *Walter John Brooks v. Nee Barwick*.

10. ('93) 15 All 141 (143): 1893 All W N 59, *Queen-Empress v. Ram Lal*. (It is not correct to import the definition of "Court" given in S. 3 of the Indian Evidence Act into, and by it to interpret the word "Court" as it exists in S. 195 of the Code of Criminal Procedure.)

#### Section 2 (General)—Note 2

1. ('72) 9 Bom H C R 99 (106, 107) (FB), *Balwantrao v. Purshotam Sidheshwar*.

2. ('80) 2 Mad 5 (7): 2 Ind Jur 782 (DB), *The Empress v. Ramanjiyya*.

('72) 9 Bom H C R 99 (106, 107) (FB), *Balvant-  
rao v. Purshotam Sidheshwar*.

3. (1899) 1899 App Cas 99 (105, 106): 79 L T 473: 47 W R (Eng) 337: 15 T L R 61, *Dilworth v. Commissioner of Stamp*.

('82) 8 Cal 534 (536) (DB), *In the matter of Nasibun*.

(1893) 1 Q B 161 (167): 62 L J Q B 213: 68 L T 66: 41 W R (Eng) 291, *Rodger v. Harrison*.

('06) 30 Bom 558 (567): 8 Bom L R 457 (DB), *The Municipal Commissioner v. Mathoorabai*. ("Includes" is a phrase of extension and not of restrictive definition—It is not equivalent to 'means'.)

4. (1893) 1 Q B 161 (167): 62 L J Q B 213: 68 L T 66: 41 W R (Eng) 291, *Rodger v. Harrison*.

5. ('78) 4 Cal 483 (493) (FB), *Empress v. Ashootosh Chuckerbutty*. (The definition of the word "Court" in Evidence Act does not exclude jury.)

('98) 22 Bom 235 (237, 238) (DB), *Queen-Empress v. Nagla Kala*. (Words "police officer" and "magistrate" in S. 26 of the Indian Evidence Act include police officers and magistrates of Native States as well as those of British India.)

6. (1899) 1899 App Cas 99 (105, 106): 79 L T 473: 47 W R (Eng) 337, *Dilworth v. Commissioner of Stamps*. (The word 'include' used in the definition of "charitable bequest" in S. 2 of the Charitable Gifts Duties Exemption Act, 1883, was meant to introduce an exhaustive definition.)



But where ordinarily the Legislature intends to exhaust the signification of the word interpreted, the expression "means" or "means and includes" is used.<sup>7</sup>

### Provincial Amendment.

#### S. 2 (A1).

#### BOMBAY

In Section 2 after the words "in the subject or context—" the following clause shall be *inserted*, namely :—

" (Ai) 'association' means any association, exchange, organization or body of individuals, whether incorporated or not, established for the purpose of regulating and controlling business of the sale or purchase of, or other transactions relating to, any goods or marketable securities ;"

—*Bombay Act II of 1949, S. 7 (1) 1-4-1949.*

"Banker."

\*(1) "banker" includes a bank and any person acting as a banker :

#### Synopsis

1. "Includes."
2. "Bank," "Banker," etc.
3. Relation of banker and customer.
4. Deposit and loan—Distinction.
5. "Person."

1. "Includes."—The effect of the use of the word "includes" in this definition is to *enlarge* the meaning of the word "banker" for the purpose of this Act by bringing within its fold (a) a bank and (b) any person acting as a banker. See also S. 2 (General), Note 2.

2. "Bank," "banker," etc.—Although this clause mentions that the term "banker" will *include* certain meanings, neither this Act nor the General Clauses Act contains any definition of what a "bank" or "banker" exactly means.

Section 3 of the Negotiable Instruments Act (Act XXVI of 1881) defines "banker" as including also persons or a corporation or company acting as bankers. But this definition also does not say *who* is a banker.

The definitions referred to and extracted below give the main ideas as to the meaning of these expressions :

(1) *The Indian Companies Act* (VII of 1913) does not define either a "bank" or a "banker" but the Act as amended in 1936 now gives a definition of a "banking company" in the new S. 277F. According to that definition a "banking company" means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, drafts or order, notwithstanding that it engages in addition in any one or more of various forms of business, enumerated therein (seventeen businesses are enumerated).

(2) In *Wharton's Law Lexicon* a "bank" is defined as "a place where money is deposited for the purpose of being lent out at interest, returned by exchange, disposed of to profit, or to be drawn out again as the owner shall call for it"; and a "banker"

\*[1879—S. 3 (1). cf : (1870) 33 & 34 Vict., c. 97—S. 45 ; (1891) 54 & 55 Vict., c. 39—S. 29.]

7.† ('78) 4 Cal 483 (493) (FB), *Empress v. Ashootosh Chuckerbutty*. (Per Jackson, J.— When a definition is intended to be exclusive, the form of words is "means and includes".)



is defined as "one who receives money to be drawn out again as the owner has occasion for it, the customer being lender, and the banker borrower, with the superadded obligation of honouring the customer's cheques up to the amount of the money received and still in the banker's hands."

(3) *Halsbury's Laws of England* gives the following definitions:

A "bank" is a corporation, partnership or individual carrying on the business of banking.

A "banker" is such individual or a member of such partnership; but for some purposes the term "banker" includes corporations or partnerships carrying on the business of banking.

The business of banking, strictly speaking, is the receipt of money from or on account of a customer, to be repaid on demand or when drawn on by cheque.<sup>1</sup>

(4) *Webster's Imperial Dictionary* defines a "bank" as "an institution which trades in money; an establishment for the deposit, custody, and issue of money, as also for making loans and discounts, and facilitating the transmission of remittances from one place to another." It defines a "banker" as "one who keeps a bank or is engaged in the business of banking; one who receives money on deposit and makes loans, negotiates bills of exchange," etc.

(5) Mr. Hart in his book on the *Law of Banking* defines a "banker" as "a person or company carrying on the business of receiving moneys, and collecting drafts, for customers subject to the obligation of honouring cheques drawn upon them from time to time by the customers to the extent of the amounts available on their current accounts."

(6) *The English Bills of Exchange Act, 1882* (45 and 46 Vict. ch. 61), S. 2 defines a "banker" as "including a body of persons whether incorporated or not who carry on the business of banking."

(7) In the leading case of *Foley v. Hill*,<sup>2</sup> Lord Brougham has given certain characteristics of a banker in the following words:

"The common position of a banker consists of the common case of receiving money from his customer on condition of paying it back when asked for, or when drawn upon, or of receiving money from other parties, to the credit of the customer, upon like conditions to be drawn out by the customer, or, in common parlance, the money being repaid when asked for."

A consideration of the above definitions will show that the principal characteristic of a banking business is the receipt of *deposits of money* on current accounts or otherwise, which are subject to withdrawal by cheque, etc. It is the characteristic which is treated as the essential point in the definition of a banking company in the Indian Companies Act already cited.

In *Rangaswami Pillai v. Sankaralingam Aiyar*<sup>3</sup> it was held that the word "bank" connotes the business of utilizing money received for purposes of *profit* and that such a business must have a *commercial side* to it. Applying this test it was held

(72) 9 Bom HCR 99 (106, 107) (FB), *Balvantrao v. Purshotam Sidheshwar*. (Where the Legislature intends to speak exhaustively it uses the word "mean" or "means".

(78) 2 Mad 5 (7): 2 Weir 123 (DB), *The Empress v. Ramanjiya*.

#### Section 2 (1)-NOTE 2

1. Halsbury, *Laws of England*, Vol. I, paras. 1147, 1148, Page 568.

2. (1848) 9 ER 1002 (1008): 2 HLC 28 (43).

3. (20) 7 AIR 1920 Mad 1011 (1012): 43 Mad 816: 58 Ind Cas 893 (DB).



in that case that the mere fact that the Government Treasury received money from the District Board and respected orders issued to it for payment would not constitute the Treasury a bank.

But in *Board's Proceedings No. 702, dated 12th March 1883*<sup>3a</sup> the Board of Revenue, Madras, had held that a Government treasury in respect of local fund money lodged therein was a bank with reference to the definition of a "banker" in the Stamp Act. These proceedings were, however, not referred to in the above Madras case.

In *Stafford v. Henry*<sup>4</sup> it was laid down that a person or a corporation doing the business of a banker and claiming to be called a banker must show a substantial part of its business to be that of bankers and not one which is only subsidiary to his business. Following this test it was held in the undermentioned case<sup>5</sup> that a company which did not receive money on deposit to any great extent or did not advance money on security, which did not, in short, *traffic in money as its principal business*, was not a banker in the strict sense of the term, although it did a small amount of banking business also.

Similarly a mere undertaking by a person to lend money to another for payment of his trade debts will not constitute the former a banker of the latter within the meaning of the Act.<sup>6</sup>

The distinction between an ordinary money-lender and a banker is that the former lends his own moneys, whereas the latter lends the moneys of others, namely, his customers. The Nattukottai Chetties in the Madras Presidency combine both these functions, and hence, although they are primarily money-lenders, are held to be bankers also.<sup>7</sup>

**3. Relation of banker and customer.**—In order to appreciate better the meaning of the expressions "bank" and "banker" it may be useful to consider some of the main points as to the relation between a banker and customer.

The relation between a banker and customer is that of debtor and creditor with a superadded obligation on the part of the banker to honour the customer's cheques so long as there are any assets of his in the banker's hands.<sup>1</sup> In the ordinary course of his trade a banker is entitled to use money paid into his bank as his own. The relation between them does not partake of a fiduciary character, nor bear analogy to the relation between principal and factor or agent, who is a *quasi* trustee for the principal in respect of the particular matter for which he is appointed.<sup>2</sup> But a

3a.(1933) Madras Stamp Manual, 4th Edn., page 5.

4. (1878) 12 Ir Eq Rep 400. (Cited with approval in 9 Bom 373).

5. ('85) 9 Bom 373 (411), *New Flaming Spinning and Weaving Co. Ltd. v. Kesowji Naik*.

6. ('93) 17 Bom 684 (685): 1892 Bom P J 373 (FB), *Ratulal Rangildas v. Vrijbhukhan Parabhuram*.

Also see S. 2 (2) & (3), Note 17 and S. 2 (7) Note 1.

7. ('27) 14 AIR 1927 Mad 478 (479): 102 Ind Cas 561 (DB), *Kadiresan Chettiar v. Ramanathan Chetti*.

#### Section 2 (1)—NOTE 3

1.\*(1848) 9 E R 1002 (1008): 2 H L C 28 (44, 45), *Foley v Hill*.

(1851) 16 Q B 560 (575): 20 L J Q B 270: 117 E R 994, *Roberts v. Tucker*.

\*(1847) 153 E R 1212 (1214): 16 L J Ex 210: 8 L T (O S) 493, *Pott v. Clegg*. (The debt due from the bank is an ordinary debt, capable of being barred by the statute of limitation.) ('07) 29 All 773 (778): 4 All L Jour 628 (DB), *Dharam Das v. Ganga Devi*.

('85) 1885 Pun Re No. 101 page 227 (229) (DB), *Bradley v. Agra Bank Ltd.*

(1872) 8 Ex 10 (13): 42 L J Ex 1: 27 L T 560: 21 W R (Eng) 57, *Garnett v. M'Kewan*.

(1867) 36 L J Ch 151 (152), *In re Agra and Masterman's Bank; Ex Parte Waring*.

See also Wharton, *Law Lexicon*, sub voce "Banker"; Halsbury, *Laws of England*, para. 1192, pp. 583, 584.

2.\*(1848) 9 E R 1002 (1008): 2 H L C 28 (44, 45), *Foley v Hill*.



fiduciary relationship may be created between them by special directions by the customer, which would convert the banker into a trustee in respect of the sums so paid. A trust will exist when the banker is to collect and remit; where he is to use and repay on demand, there is no trust.<sup>3</sup> Thus, where the customers had specially directed their bankers to invest in Government securities the money standing to their credit in the bank, it was held that the funds were held by the bankers in their fiduciary capacity and it was the duty of the bankers not to mix the money of their customers with their own money.<sup>4</sup>

**4. Deposit and loan—Distinction.**—As seen in Note 2, the distinctive feature of the business of a banker or banking concern is the acceptance of *deposits* of money on current account or otherwise, subject to withdrawal by cheque, draft, or order. So, in determining, whether a particular person or institution should be deemed to be a banker or bank, the general nature of the principal business of such person or institution may be considered. In this connection, it would be necessary to remember and apply the well-known and well established distinction between *loans* and *deposits*. Where the characteristic feature of the monetary dealings of a firm or individual who is shown to be in the practice of receiving the moneys of other people on interest is that such receipts are “deposits” and not loans, it is a circumstance indicative of the fact that such individual or firm is a bank. On the other hand if the transactions are generally shown to be *loans* and not deposits, it may be inferred that the person is not a banker. This may not be a conclusive test. But this is a test which may be useful in doubtful cases.

The chief distinction between a loan and a deposit is that a loan payable on demand is repayable *immediately* and not only on demand being made, while a deposit payable on demand becomes due only on a demand being actually made.<sup>1</sup>

The moneys of a customer in the hands of a banker are deemed under the law to be *deposits* and not merely loans. For, as pointed out in *Joachimson v. Swiss Bank Corporation*<sup>2</sup> the obligation on the part of the customer to make actually a demand as a condition precedent to the arising of the obligation on the part of the banker to repay the money is one of the implied obligations involved in the dealings between a banker and his customer.

**5. “Person.”**—According to the definition of “banker” in this Act, a “banker” includes any “person” acting as a banker. Section 3 (39) of the General Clauses Act, 1897, defines a “person” as including any company or association or body of individuals, whether incorporated or not. Hence any company or association or body of individuals acting as a banker would be a banker within the meaning of this Act. Thus, the definition of “banker” in this Act and the one in the Negotiable Instruments Act are virtually identical.

(1867) 36 LJ Ch 151 (152), *In re Agra and Masterman's Bank; Ex parte Waring*.

3. ('09) 32 Mad 68 (70, 71): 1 Ind Cas 712 (DB), *Official Assignee of Madras v. G. Smith*.

4. ('11) 35 Mad 712 (721): 11 Ind Cas 769 (DB), *Ramsey and Co. v. Official Assignee of Madras*.

Section 2 (1)—NOTE 4

1. ('36) 23 AIR 1936 PC 171 (173): 17 Lah 557: 63 Ind App 279: 162 Ind Cas 454 (P C), *Mahomed Akbar Khan v. Attar Singh*.

NOTE.—The distinction between loan and deposit is reflected in Arts. 59 and 60, Limitation Act. Article 60 shows that moneys of a customer in the hands of the banker payable on demand do not become due until a demand is actually made. See AIR Commentaries on the limitation Act, 2nd (1942) Edn., Notes on Arts. 59 and 60.

2. (1921) 37 TLR 534 (539): (1921) 3 KB 110: 90 LJ KB 973: 125 LT 338 (342).



\*(2) **“Bill of exchange”** means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and includes also a hundi, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money :

“Bill of exchange payable on demand.” (3) **“bill of exchange payable on demand”** includes—

- (a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen ;
- (b) an order for the payment of any sum of money weekly, monthly or at any other stated periods ; and
- (c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn:

## SECTION 2 (2) & (3)

### Synopsis

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|--|--|
| 1. Legislative changes.  | 14. Order for payment and assignment of debt —Distinction.           |
| 2. Analogous provisions of the English Statutes.                 | 15. Banker's drafts. See Note 11.                                    |
| 3. Relative scopes of sub-sections (2) and (3) See Note 21.      | 16. Interest coupons. See Note 11.                                   |
| 4. Essentials of a bill of exchange.                             | 17. Trader's chits.  |
| 5. “Unconditional order.”  | 18. Master's direction to a servant to pay money to a person.        |
| 6. Drawee.   | 19. Barati chittis and Samachari chittis.                            |
| 7. Certain sum of money.   | 20. Letters of credit.   |
| 8. Hundis.   | 21. Bill of exchange payable on demand.                              |
| 9. Shahjog hundis.   | 22. Payability on demand—Admissibility of external evidence as to.   |
| 10. Jokhmi hundis.   | 23. Stamp duty on bills of exchange, See Note 21 and Sch. I Art. 13. |
| 11. “Any other document” entitling a person to payment of money. | 24. Alteration of bill or note. See Notes on Section 14.             |
| 12. Order for payment of money.                                  |  |
| 13. Order for payment out of a particular fund.                  |  |

1. **Legislative changes.**—(i) The Act of 1860 (S. 41) and the Act of 1862 (S. 56) merely defined a bill of exchange as including “a hundi or any other instrument of a like nature.”

(ii) The Act of 1869 (S. 3 (3)) defined it as including “a hundi and every other instrument (except a cheque) whereby a person is ordered to pay to another a specified sum of money.”

(iii) Under the Act of 1879 (S. 3 (2)), the term was simply defined as including a hundi.

(iv) The definition of a bill of exchange payable on demand, was for the first time introduced in the Act of 1899.

\*[1879—S. 3 (2) ; 1869—S. 3 (3) ; 1862—S. 56 ; 1860—S. 41. cf. : (1870) 33 & 34 Vict. c. 97—S. 48 ; (1891) 54 & 55 Vict. c. 39—S. 32 ; The Bills of Exchange Act (45 & 46 Vict. c. 61)—S. 3.]



2. **Analogous provisions of the English Statutes.**—These definitions correspond to the definitions contained in S. 32, English Stamp Act, 1891 (54 & 55 Vict. C. 39). In the previous English Stamp Act, 1870 (33 & 34 Vict. C. 97), it stood as S. 48. Section 32 of the English Stamp Act, 1891, is as follows :

“32. For the purposes of this Act the expression “bill of exchange” include  
*Meaning of “bill of exchange.”* draft, order, cheque, and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money ; and the expression “bill of exchange payable on demand” includes—

- (a) An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen ; and
- (b) An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also an order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf.”

The definition of bill of exchange, contained in S. 3 of the Bills of Exchange Act, 1882 (45 & 46 Vict. C. 61), may be compared with the definition in S. 5 of the Negotiable Instruments Act which is adopted under this Act. Section 3 of the Bills of Exchange Act, 1882, is as follows :

“3. (1) A bill of exchange is an unconditional order in writing, addressed by  
*Bill of exchange defined.* one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section, but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to re-imburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid by reason—

- (a) that it is not dated ;
- (b) that it does not specify the value given, or that any value has been given therefor ;
- (c) that it does not specify the place where it is drawn or the place where it is payable.”

3. **Relative scopes of sub-sections (2) and (3).**—See Note 21.



**4. Essentials of a bill of exchange.**—Section 2 (2) which defines a bill of exchange falls into two parts. The first part provides that a bill of exchange *means* a bill of exchange as defined by the Negotiable Instruments Act, 1881. The effect of the second part is that for the purposes of this Act, a bill of exchange must be deemed to include, in addition to the instruments falling within the definition in the Negotiable Instruments Act, certain other instruments mentioned which may not fall within such definition.<sup>1</sup>

So, the first consideration in determining whether an instrument is a bill of exchange for the purpose of this Act is to see whether it falls within the definition of a bill of exchange contained in S. 5 of the Negotiable Instruments Act. That section runs as follows :

“A ‘bill of exchange’ is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

“A promise or order to pay is not ‘conditional’, within the meaning of this section and S. 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

“The sum payable may be ‘certain’, within the meaning of this section and S. 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

“The person to whom it is clear that the direction is given or that payment is to be made may be a ‘certain person’, within the meaning of this section and S. 4, although he is misnamed or designated by description only.”

(This definition may be compared with the definition of bill of exchange contained in S. 3 of the English Bills of Exchange Act, 1882 (45 & 46 Vict. C. 61), given in Note 2.)

So, the essentials of a bill of exchange under the Negotiable Instruments Act are as follows :

- (1) there must be an instrument in writing;
- (2) the instrument must be signed by the maker;
- (3) the instrument must be one which contains an *order*;
- (4) the order must be an unconditional one;
- (5) the order must be for the payment of money;
- (6) the order must not be for anything else;
- (7) the person ordered must be certain;
- (8) the money must be payable to a *certain* person or to his order or to bearer.

Thus, the central point in a bill of exchange as defined in the Negotiable Instruments Act is that it is an *order* for the payment of money.

Section 2 (2) & (3)—NOTE 4

1. See Statement of Objects and Reasons—Notes on Clauses, page 63.

(28) 15 AIR 1928 Cal 566 (567) : 56 Cal 233 : 115 Ind Cas 177 (SB), *In the matter of Stamp Act*.

[See also (1817) 106 ER 14 (15) : 1 B and

Ald 36, *Firbank v. Bell*. (Similar provision in England.)

(1896) 65 LJ QB 372 (377) : (1896) 1 QB 542 : 74 LT 209 : 44 WR (Eng) 516, *London Clearing Bankers v. Commrs. of Inland Revenue*.]

Also see Note 21.



It is not clear whether the drawer and drawee must necessarily be different persons. This does not seem to be necessary under the Indian Act,<sup>2</sup> though S. 3 of the English Bills of Exchange Act, 1882, expressly provides that the order must be addressed "by one person to another".<sup>3</sup> But both under the Indian law and the English law, where the drawer and the drawee are the same person, the holder has the option of treating the instrument either as a promissory note or a bill of exchange. See Section 17 of the Negotiable Instruments Act, and Section 5, English Bills of Exchange Act.<sup>4</sup> The option is not available to the maker of the instrument.<sup>5</sup>

The *time* for payment need not be specified in a bill of exchange. Under S. 19 of the Negotiable Instruments Act, if no time for payment is specified in the bill, it will be deemed to be payable on demand.

An instrument which is not a bill of exchange as defined in the Negotiable Instruments Act, may yet be a bill of exchange for the purpose of this Act if it falls under the second part of sub-section (2).

This part includes within the definition of a bill of exchange the following:

1. Hundis. (See Note 8.)
2. Any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person, for any sum of money. (See Note 11.)

Has sub-s. (3) the effect of enlarging the definition of a "bill of exchange" given in sub-s. (2)? No; see Note 21.

5. "Unconditional order."—An order for the payment of money upon any condition or contingency which may or may not be performed or happen will not be a bill of exchange under sub-s. (2). But such a document will be a "bill of exchange

2. ('30) 17 AIR 1930 Pat 239 (240): 9 Pat 717: 127 Ind Cas 575 (DB), *Bibi Kazmi v. Lachman Lal Sao*.

('28) 15 AIR 1928 Cal 566 (567): 56 Cal 233: 115 Ind Cas 177 (SB), *In the matter of Stamp Act*.

[See however, ('34) 21 AIR 1934 Pesh 1 (1): 145 Ind Cas 662 (DB), *Hafiz Umdardaraz Khan v. Md. Akbar Khan*.]

3. (1841) 133 ER 1271 (1273): 11 LJCP 21, *Miller v. Thomson*. (An instrument in the form of a bill of exchange drawn upon a joint stock bank by the manager of one of its Branch Banks, by order of the Directors held to be a promissory note.)

(1850) 137 ER 1015 (1017): 19 LJCP 305: 15 LT (O S) 91, *Allen v. Sea Fire and Life Assurance Co.* ("Sea, Fire, Life Assurance Co. To the cashier. Thirty days after date, credit Mrs. A or order with the sum of.... claims per "Susan King" in cash, on account of this corporation." The instrument was signed by the company. It was held that the deed was a promissory note.)

4. ('28) 15 AIR 1928 Cal 566 (567): 56 Cal 233: 115 Ind Cas 177 (SB), *In the matter of Stamp Act*.

('30) 17 AIR 1930 Pat 239 (240): 9 Pat 717: 127 Ind Cas 575 (DB), *Bibi Kazmi v. Lachman Lal*.

('32) 19 AIR 1932 Mad 765 (766): 140 Ind Cas 315, *Alagappa Chetti v. Narayanan Chettiar*. (Ambiguous document—Party treating it as bill of exchange—The document must be treated as such both for purposes of Negotiable Instruments Act and Stamp Act—It cannot be treated as falling under both categories, i.e., promissory note as well as bill of exchange under S. 6, Stamp Act.)

Also see S. 6, Note 4.

[But see ('16) 3 AIR 1916 Cal 838 (839, 840): 33 Ind Cas 247, *Assaram v. Kesrichand*. (Shahjog Hundi, attested and drawn by a firm upon itself—Held that the instrument was not a bill of exchange within S. 2 sub-s. (2), Stamp Act. NOTE—For a criticism of this case, see AIR 1928 Cal 566: 56 Cal 233 (SB) already cited.)]

('16) 3 AIR 1916 Cal 888 (889): 33 Ind Cas 250 (DB), *Keshri Chand v. Asharam Mahato*. (Shahjog Hundi drawn by a firm upon itself held not a bill of exchange because the bill of exchange contemplated two persons as drawer and drawee. NOTE—For a criticism of this case, see AIR 1928 Cal 566: 56 Cal 233 (SB) already cited.)]

5. ('30) 17 AIR 1930 Pat 239 (240): 9 Pat 717: 127 Ind Cas 575 (DB), *Bibi Kazmi v. Lachman Lal*.



payable on demand" by virtue of the special provisions contained in sub-s. (3). See Note 21.

Under S. 5, Negotiable Instruments Act, an order for payment is not conditional by reason of the time for payment being expressed to be on the lapse of a certain period after the occurrence of a specified event which *must* happen though the time of its happening may be uncertain.

The fact that an instrument contains at the end of it, by way of a post script, a clause for *repayment* of the amount<sup>1</sup> or that there are words inserted merely to explain why the order was drawn, as in the common phrase "value received"<sup>2</sup> does not affect the nature of the order if it is otherwise unconditional.

**6. Drawee.**—The person to whom the bill is addressed must be named or indicated in the bill with reasonable certainty. From para. 4 of S. 5 of the Negotiable Instruments Act it is clear that a drawee may be a *certain* person within the meaning of that Act, although he is misnamed or designated by description only.

It has been held that although no party is named in the instrument yet if it is "accepted" by a party the acceptor might be deemed to have admitted himself to be the party addressed and the instrument may be held to be a bill of exchange.<sup>1</sup>

*Drawer and drawee, if should be different persons.* See Note 4.

**7. Certain sum of money.**—Under S. 5, Negotiable Instruments Act, 1881, a bill of exchange must be for the payment of money *only*. An instrument, therefore, which requires any other act to be done in addition is not a bill of exchange.<sup>1</sup> Thus, an instrument ordering the delivery of houses and a wharf in addition to the payment of a sum of money is not valid as a bill of exchange.<sup>1a</sup> Further, it is essential that the money which is to be paid should be a *certain* sum. On this ground, an instrument running "Pay to A B the proceeds of a shipment of goods, *value about* £2000," etc. was not treated as a bill of exchange.<sup>2</sup> But a sum payable which can be ascertained, is a *certain* sum.<sup>3</sup>

#### Section 2 (2) and (3)—NOTE 5

1. ('88) 1888 Pun Re No. 61, page 151 (154, 155) (D B), *Sheo Das v. Kanhaiya Lal*.
2. (1868) 3 Q B 753 (759): 37 L J Q B 280; 18 L T 881: 17 W R (Eng) 8, *Griffin v. Weatherby*. (Observations of Lee C. J. in *Banbury v. Lissett*, (1744) 93 E R 1134 N P: 2 Str 1211 dissented from.)

#### Section 2 (2) and (3)—NOTE 6

1. ('30) 17 AIR 1930 Cal 697 (699): 57 Cal 695: 129 I. C. 305 (DB), *Jogesh Chandra v. Md. Ibrahim*. (*Lloyd v. John Edward Oliver* (1852) 18 Q B 471: 21 L J Q B 307 relied on—Other English cases referred.)

#### Section 2 (2) and (3)—NOTE 7

NOTE.—This is expressly provided in the Bills of Exchange Act, 1882, (45 and 46 Vic. c. 61), S. 3 (2). In S. 5, Negotiable Instruments Act, the word "only" after the words "pay a certain sum of money" would necessarily imply such a condition.

- 1a. (1747) 93 E R 1175 (1175): 2 Stra 1271 (1271), *Martin v. Chauntry*.
2. (1823) 107 E R 402 (403): 2 L J (O S) K B 22, *Jones v. Simpson*.

- [See also (1838) 112 E R 1254 (1263): 8 L J Q B 17, *Hutchinson v. Heyworth*. (A letter ran:—"Liverpool, Sept. 23rd. 1831—. Gentlemen, We hereby give you authority to pay R & Co. bankers, after you have paid yourselves the balance we owe you, from the net proceeds of our shipment to your foreign establishments up to the present date, one half of the remainder of the proceeds of said shipments. Sd./ H & J." It was held that the letter was not an order to pay a *distinct* sum of money and so, was not a bill of exchange. But the letter containing authority to pay in these words "we authorise you to pay R & Co. after you have paid yourselves the balance we owe you from the net proceeds of our shipment to your foreign establishment to the present date, one half of the remainder of the proceeds of said shipments, provided the same shall not exceed the sum of £5000," was held to mention a sum, which could be ascertained and therefore the bill was a bill of exchange.)]
3. (1838) 112 E R 1254 (1263): 8 L J Q B 17, *Hutchinson v. Heyworth*.



Paragraph 3 of S. 5, Negotiable Instruments Act, specifically provides that a sum payable is not uncertain, although it is required to be paid with interest. So also, that paragraph makes it clear that the sum may also be expressed to be payable by instalments with a provision that on default in payment of any instalment, the whole shall become due. Neither of the above provisions will therefore alter the character of the instrument as a bill of exchange.

The extension of the definition under this Act does not affect any of these essentials.

**8. Hundis.**—Hundis are expressly included in the definition of a bill of exchange in sub-section (2).

There is no legal definition of a hundi.<sup>1</sup> The term is applied to various kinds of instruments written in the Indian languages, which correspond to bills of exchange.

The term is derived from the word “hund” which means “to collect”. The system of issuing hundis has been in vogue in India from ancient times. The system is adopted to collect debts and facilitate credit.

The incidents of the system are governed by usage. Section 1 of the Negotiable Instruments Act expressly recognises and saves such usage.

A hundi, in the main is an *order* for the payment of money.

There are various forms of *hundis*. Some of these forms are not bills of exchange as defined in the Negotiable Instruments Act. For instance, a *shahjog* hundi is not such a bill of exchange because it is not payable to a “certain person” i. e., a specified person or his order or bearer. The instrument is payable to a “respectable holder” which expression only describes a *particular* class of persons and does not refer to any particular individual or the bearer of the document. (See Note 9.)

Similarly, a *jokhmi hundi* is not an *unconditional* order for payment and so is not a bill of exchange as defined in the Negotiable Instruments Act. See Note 10.

But all such documents being *hundis* are “bills of exchange” for the purpose of this Act, having been expressly included under that expression by sub-section (2).<sup>2</sup>

**9. Shahjog hundis.**—*Shahjog hundis* are a well-known class of hundis. Their main characteristic is that they are payable only to a “respectable holder”. The acceptor does not get a discharge unless he takes the trouble to satisfy himself that the person presenting the document for payment is either known in the bazaar

Section 2 (2) and (3)—NOTE 8

1. ('34) 21 AIR 1934 Pesh 1 (2) : 145 Ind Cas 662 (DB), *Hafiz Umardaraz v. Md. Akbar Khan*.

2. See ('19) 6 AIR 1919 Cal 235 (238) : 51 Ind Cas 88 (DB), *Biswanath v. Govinda*

*Chandra*. (A bill of exchange may include a hundi; but it does not follow that a hundi includes a bill of exchange—Hence, where a bill of exchange is duly stamped according to Rules applicable to bills of exchange, the stamping cannot be questioned on account of non-compliance with rules as to *hundis*.)



or identified to him.<sup>1</sup> Thus, the instrument is not payable to 'bearer'.<sup>2</sup> Nor is it payable to any specified person or order.<sup>3</sup> Hence, the instrument is not a bill of exchange as defined in the Negotiable Instruments Act.<sup>4</sup> But being a *hundi* it is a bill of exchange for the purpose of this Act.

As a *shahjog hundi* is not payable to order or bearer, it has been held by the Calcutta High Court that a *shahjog hundi* drawn on oneself and attested by a witness is a bond within the meaning of S. 2 (5) (b).<sup>5</sup>

**10. Jokhmi hundis.**—*Jokhmi hundis* form one of the principal classes of hundis. These documents resemble ordinary hundis except in one important matter, namely, that they are drawn in respect of the price of goods shipped and are payable only on the arrival of the goods safely at destination.<sup>1</sup> The transaction works out like this. The consignor of the goods draws the hundi on the consignee, making it payable on the safe arrival of the goods at the port of destination. Then the hundi is bought from the consignor by another person who pays cash for it deducting a certain amount. On the safe arrival of the goods the money is collected from the consignee, by the holder of the instrument. Thus, while the consignor gets ready money for his goods, the document also serves as a sort of an insurance with this difference that the money is paid in advance and then recovered back if there is no loss, unlike the system under ordinary insurance wherein the money is paid only if there is loss.

Thus, *jokhmi hundis* are *conditional* documents. The term *jokhmi* means a condition and correctly describes the nature of the instrument.<sup>2</sup>

Being conditional, such documents cannot come under the definition of a bill of exchange under S. 5, Negotiable Instruments Act, which requires an *unconditional* order for payment. But being *hundis* they are bills of exchange for the purpose of this Act.

#### Section 2 (2) and (3)—NOTE 9

- 1.\*('69) 6 Bom H C R (O O) 24 (27), *Davlat-ram Shiriram v. Bulakidas Khemchand*. (Shah means a responsible and respectable person, a man of worth and substance known in the bazaar. A Hundi payable to Shah is paid on the responsibility of the Shah. If he be not known to the drawee, inquiry is made about him and the amount of the hundi is not paid till that inquiry is satisfactorily answered or till some one known to the drawee is found to identify him or speak to his responsibility.)
- ('26) 13 AIR 1926 Bom 471 (473, 474): 50 Bom 765: 98 Ind Cas 555, *Champaklal v. Keshrichand*.
- ('94) 18 Bom 570 (577, 578) (DB), *Ganeshdas Ramanarayan v. Lachminarayan*.
- ('14) 1 AIR 1914 Bom 239 (240): 25 Ind Cas 52, *Bansidhar v. Jwalaprasad*.
- †('16) 3 AIR 1916 Cal 838 (839): 33 Ind Cas 247, *Assaram v. Kesrichand*.
- ('04) 26 All 493 (495): 1 All L Jour 254 (DB), *Lalla Mal v. Kesho Das*.
2. ('14) 1 AIR 1914 Bom 239 (240): 25 Ind Cas 52, *Bansidhar v. Jwalaprasad*.
- ('04) 26 All 493 (495, 496): 1 All L Jour 254 (DB), *Lalla Mal v. Kesho Das*. (5 Cal W N 313 relied on.)
- ('16) 3 AIR 1916 Cal 838 (839): 33 Ind Cas 247, *Assaram v. Keshrichand*.

- ('16) 3 AIR 1916 Cal 888 (890): 33 Ind Cas 250 (DB), *Keshri Chand v. Asharam Mahto*.
  - ('32) 19 AIR 1932 Lah 312 (313): 143 Ind Cas 257 (DB), *Murli Dhar v. Hukam Chand*.
  - ('71) 7 Beng L R 275 (304): 16 Suth W R (O C) 3 (DB), *Thakur Das v. Futteh Mull*.
  - ('01) 5 Cal W N 313 (320), *Bhuputram v. Hari Prio Coach*.  
[But see ('84) 1884 All W N 3 (3) (DB), *Balmukand Lal v. Collector of Jaunpur*.]
  3. ('16) 3 AIR 1916 Cal 838 (839): 33 Ind Cas 247, *Assaram v. Kesrichand*.
  - ('94) 18 Bom 570 (580) (DB), *Ganeshdas Ramanarayan v. Lachminarayan*.
  4. ('36) 23 AIR 1936 All 396 (397): 58 All 858: 162 Ind Cas 894 (DB), *Firm Mangal Sen Deoprasad v. Ganeshi Lal*.
  5. ('16) 3 AIR 1916 Cal 888 (889): 33 Ind Cas 250 (DB), *Keshari Chand v. Asharam Mahato*.
  - ('16) 3 AIR 1916 Cal 838 (839): 33 Ind Cas 247, *Assaram v. Kesrichand*.
- Also see S. 2 (5) Note 6.

#### Section 2 (2) and (3)—NOTE 10

1. ('80) 4 Bom 333 (340), *Jadowji Gopal v. Jetha Shamji*.
2. ('80) 4 Bom 333 (340), *Jadowji Gopal v. Jetha Shamji*.



11. "Any other document" entitling a person to payment of money.—The words "bill of exchange" include, for the purpose of the Stamp Act, not only bills of exchange as defined by the Negotiable Instruments Act and hundis, but also "any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money."

It will be seen that in their literal sense, the words "any other document...." are very wide and capable of including any and every imaginable document under which one person is entitled to receive a sum of money from another. Such a literal construction will lead to absurd results as it will include within the definition of a bill of exchange all sorts of documents which it will be ridiculous to suppose were ever intended to be regarded as bills of exchange even for purposes of the Stamp Law. Thus, promissory notes, mortgage bonds, policies of insurance, security bonds, etc., would all become "bills of exchange" as being documents entitling a person to payment of money by another. Such a literal construction has, therefore, to be avoided, if the words of the section are capable of a more reasonable interpretation.

In this connection, it may be noted that the corresponding provisions of the English Stamp Acts, namely, S. 48 of the Act of 1870 and S. 32 of the Act of 1891 contain identical words. It is the practice in England not to take these words literally but subject to limitation.<sup>1</sup>

Thus, in *Fisher v. Calvert*<sup>1a</sup> in construing the English Stamp Act, 1870, Jessel, M. R., observed that he would rather not say what the exact meaning of S. 48 was, but he thought it could never have been intended to include every document coming literally within the meaning of the words used. If that were not so, almost every kind of written document would be included as a bill of exchange and great injustice and confusion would arise, as it could not be stamped subsequently and would be altogether void. Reading the definition of a "bill of exchange" given in the Act, any covenant such as a covenant to pay rent which was a document entitling a person to payment by some person, was certainly within the first sub-section. In his Lordship's opinion it was quite plain therefore that the draftsman must have intended that the words should be read with some limitations.

The question is, subject to what limitations are the general words in this section to be taken? There does not seem to be any authoritative formulation of such limitation. But it is conceived that the well-known principle of *ejusdem generis* should be applied to the construction of the words "any other document" in this sub-section. Hence, these words will only apply to documents which are *analogous* in their nature to bills of exchange and hundis.

It is necessary, therefore, to consider here what is the *distinctive* nature of bills of exchange and hundis.

A bill of exchange, is one of the negotiable instruments dealt with by the Negotiable Instruments Act. The Act deals with two other kinds of negotiable instruments, namely, promissory notes and cheques.

#### Section 2 (2) and (3)—NOTE 11

1. ('28) 15 AIR 1928 Cal 566 (567): 56 Cal 233: 115 Ind Cas 177 (SB), *In the matter of Stamp Act*. ("It has been held in cases in England that the language (of the English Stamp Act) cannot be taken literally because the language is so wide that it might

include all sorts of instruments which are not for any purpose capable of being called or classed as bills of exchange. It has been pointed out that a mortgage or a lease may be a document entitling a person to payment by another person of a sum of money.")  
1a. (1879) 27 WR (Eng.) 301 (301).



A cheque is only a form of bill of exchange. So, in the main, there are only two types of instruments treated as negotiable instruments under the Negotiable Instruments Act, the bill of exchange and the promissory note.

A comparison between the definition of a promissory note and that of a bill of exchange given in Ss. 4 and 5 respectively of the Negotiable Instruments Act shows that the two definitions are couched in similar language except for one important point. This point is that while a promissory note is defined as an *undertaking* to pay money a bill of exchange is defined as an *order* to pay money. This difference gives the clue to what may be regarded as the crucial point, the distinctive characteristic of a bill of exchange.

A bill of exchange, then, is an *order* to pay money and not an undertaking to pay money.<sup>1b</sup> In other words, the drawer of bill of exchange does not thereby *ipso facto* impose on himself any obligation to pay money. He only holds out that the person indicated as drawee will pay the money when it is due. The drawer's obligation arises only if the drawee refuses to accept the bill or fails to pay it at maturity.

The legal position is the same even when the drawer and drawee of a bill of exchange are the same. In such a case, under S. 17, Negotiable Instruments Act the payee is entitled, at his option, to treat the instrument as a promissory note. But except for such a contingency there is no *initial* obligation on the part of the drawer to pay the money.

Similarly, there is no initial obligation on the drawee to pay the amount of the bill. His obligation arises only on *acceptance*.

A bill of exchange, therefore, in effect is a document which A gives to B on the assurance that B can get it cashed in due course by applying to the proper quarters but that if he should not succeed in so getting paid, A himself will make good the amount. The document by itself does not give rise to any obligation in favour of the payee.

The theory on which a bill of exchange is based is that the drawee has in his hands moneys of the drawer on the terms of applying such moneys according to the directions of the drawer.<sup>2</sup>

Where the instrument is not drawn on the footing of there existing such a relationship between the drawer and the drawee, there can be no bill of exchange. For in such a case, there can be no *order*—there can only be a *request*, which is not what is required for a bill of exchange. In such a case, there can be no bill of exchange either as defined under the Negotiable Instruments Act nor under the extended definition in sub-s. (2). This is the principle on which the decisions considered in Note 14 which make a distinction between an assignment of a debt and a bill of exchange proceed.

A *hundi* is virtually only a bill of exchange in an oriental script which may have some special incidents under local usage.<sup>3</sup> It does not differ from a bill of exchange in its essential character as an *order* for the payment of money.

1b. See ('34) 21 AIR 1934 Pesh 1 (1): 145 Ind Cas 662 (DB), *Hafiz Umaradaraz v. Akbar Khan*. (A bilateral document like a promissory note cannot be a bill of exchange.)

*Buck v. Robson*. (Per Cockburn, C. J.—Approving *Brice v. Bannister*, (1878) 3 Q B D 569 and dissenting from *Ex parte Shellard*, (1873) 17 Eq. 109.)

2. (1878) 3 Q B D 686 (691, 692): 48 L J Q B 250: 39 L T 325: 26 W R (Eng) 804,

3. ('34) 21 AIR 1934 Pesh 1 (2): 145 Ind Cas 662 (DB), *Hafiz Umaradaraz v. Akbar Khan*.



Any document, in order to be considered analogous to a bill of exchange or hundi, so as to come within the extended definition under sub-s. (2) must, therefore, possess the essential characteristic of a bill of exchange above discussed. That is, it must be in effect in the nature of an *order* or *direction* for the payment of money.<sup>3a</sup>

The view that is set out here is supported by *Buck v. Robson*<sup>3b</sup> and *Fisher v. Calvert*<sup>3c</sup> discussed in Note 14. Those decisions clearly proceed on the assumption that even for purposes of the Stamp Act (the English Stamp Act is not materially different on this point and uses identically wide language in defining a bill of exchange), a bill of exchange connotes an *order* for payment. Thus, a promissory note,<sup>4</sup> a money bond, a mortgage bond and similar documents which are essentially *undertakings* to pay money will not be bills of exchange even under the extended definition of the term.

But in considering the nature of an instrument it is not necessary that the document must contain *in words* an order for the payment of money. The Court is entitled to consider the purpose for which the document is issued.<sup>5</sup> Thus, although a document may be in the form of a receipt, it may be regarded as a bill of exchange if the understanding between the parties is that the holder of the document is to be entitled to receive payment of a certain sum of money by presenting the document.<sup>6</sup> The words of the definition are significant in this respect. They are "entitling or purporting to entitle." So, the question for the Court is whether the document *entitles* the holder to payment, apart from the words used.

It is also not necessary that in order to be considered a document *entitling* a person to payment, the document must itself be one on which an action can be founded.<sup>7</sup>

But it is conceived that the document must entitle a person to a specific sum of money and nothing else. Further, the document must be unconditional.

3a. (1790) 100 E R 876 (878, 879): 4 T R 28 (32), *Mead v. Young*. (Grose, J.—A bill of exchange is only a transfer of a chose in action according to the custom of merchants; it is authority to one person to pay to another the sum which is due to the first and it is generally directed to be paid to the payee or his order. When the person on whom it is drawn accepts, he only engages by the terms of his acceptance to pay the contents of the bill to the person named in it, or to his order.)

3b. (1878) 3 Q B D 686 (691, 692): 48 L J Q B 250: 39 L T 325: 26 W R (Eng) 804.

3c. (1879) 27 W R (Eng) 301 (301).

4. ('34) 21 AIR 1934 Pesh 1 (1): 145 Ind Cas 662 (DB), *Hafiz Umdardaraz v. Akbar Khan*.

[See however ('30) 17 AIR 1930 Cal 697 (699): 57 Cal 695: 129 Ind Cas 305 (DB), *Jogesh Chandra v. Md. Ibrahim*. (In the peculiar circumstances of this case a document worded like a promissory note but designated a hundi and bearing words of "acceptance" signed by certain persons was held to be a promissory note—*Lloyd v. John Edward Oliver*, (1852) 18 Q B 471: 21 L J Q B 307 followed.)]

5. (1927) 2 K B 465 (474): 137 L T 817: 43 T L R 754: 96 L J K B 1006, *Midland Bank*

*Ltd. v. Inland Rev. Commrs.* (The instrument must in *itself* be one entitling a person to payment by another. If there is another advantage which accrues to the holder of a document by virtue of another arrangement *dehors* the document the effect of that arrangement cannot be imputed to that document so as to attract to it any duty to which a document embodying such an arrangement would be liable. But in considering what the document itself does, one need not look at the mere words in the document in the abstract apart from the function of the document as intended and understood by the parties who employ it.)

(1894) 2 Q B 142 (146, 147): 70 L T 667: 42 W R (Eng) 542, *Rothschild & Sons v. Inland Rev. Commissioners*.

6. (1927) 2 K B 465 (474): 137 L T 817: 43 T L R 754: 96 L J K B 1006, *Midland Bank Ltd. v. Inland Revenue Commissioners*.

[But see ('11) 13 Ind Cas 330 (330) (FB) (Lah), *In re Stamp Act*. (Submitted not correct.)]

7. (1927) 2 K B 465 (475): 137 L T 817: 43 T L R 754: 96 L J K B 1006, *Midland Bank Ltd. v. Inland Rev. Commrs.* (Committee of London Clearing Bankers v. Commissioners of Inland Revenue, (1896) 1 Q B 542: 65 L J Q B 372 followed.)



Thus, it would appear that the effect of the extended definition under sub-s. (2) is only to include within the expression "bill of exchange" documents which may be described as *informal* bills of exchange, that is to say, documents which *substantially* have the effect of bills of exchange and are used like bills of exchange but which, for lack of express words of order or demand for payment or other formality are not bills of exchange in the strict sense under the Negotiable Instruments Act.

Sub-section (3) has not the effect of enlarging the definition given in sub-s.(2). See Note 21.

It has been suggested with reference to the corresponding provision in the English Stamp Act of 1870, namely, S. 48, that it will not apply to documents otherwise specifically provided for by the Act.<sup>7a</sup> Such a construction may be adopted even with reference to this section. But the construction does not give any positive clue to the understanding of the section. Besides, it is open to the criticism that it reads into the section words which are not there.

The decisions as to the applicability of the extended definition to particular documents will be found to fairly fall within the principles discussed above. Thus, the instruments in the following cases have been held to be "bills of exchange," under the extended definition :

#### A. Interest coupons.

In *Rothschild and Sons v. Commissioners of Inland Revenue*<sup>8</sup> the Hungarian Government had issued certain bonds, in regard to certain loan transactions. Along with each bond were issued coupons for the payment of interest. These coupons were payable to bearer at the various places therein specified. It was held that the coupons were bills of exchange. It was pointed out in this decision, in considering the effect of a document, the Court need not confine itself to the words actually used in the document but may go behind it and consider the purpose for which the document has been issued, so that actual words of an order or mandate to pay are not indispensable. Hence, though the interest coupons merely stated that interest would be paid at a certain time and place and were not bills of exchange within the legal definition of that phrase, nevertheless they came within the more general language of the Stamp Act.

#### B. Order on bank to transfer sum from one account to another.

In *Committee of London Clearing Bankers v. Commissioners of Inland Revenue*<sup>9</sup> it was held that an order to a bank to transfer a sum of money from the customer's account to the account of another customer of the bank was a bill of exchange. Such a document entitles a person to "draw on" the bank.

#### C. Receipts.

In *Midland Bank v. Inland Revenue Commissioners*<sup>10</sup> a bank issued to its customers receipt-forms to be used by them and agreed with the customers that it would pay any one presenting such a receipt form duly signed by the customer the sum mentioned therein. (The sum was not to exceed £2.) It was held that when a customer filled in the amount and signed and gave a person such a document it became a bill of exchange.

7a. (1883) 14 L R Ir 140, *Adams v. Morgan*.

8. (1894) 2 Q B 142 (146, 147) : 70 L T 667 ; 42 W R (Eng) 542.

9. (1896) 65 L J Q B 372 (376) : (1896) 1 Q B 542 : 74 L T 209 : 44 W R (Eng) 516.

(It was held in this case that the document was a bill of exchange payable on demand—

According to Kay L. J. the document entitled a person to *payment* rather than to *draw upon* the bank : Affirming *Committee of London Clearing Bankers v. Commissioners of Inland Revenue*, (1896) 1 Q B D 222.)

10. (1927) 2 K B 465 (474) : 96 L J K B 1006 : 137 L T 817 : 43 T L R 754.



There is, however, a contrary decision by the Punjab Chief Court on this point.<sup>10a</sup> It was held in that case that whatever may be the private understanding between the banker and customer, the Court must be guided by what is stated in the document. It is submitted that the decision is not correct. It fails to take account of the extended definition in this sub-section. The decision in *Midland Bank's* case was not referred to.

#### D. Demand drafts.

Demand drafts drawn by one branch of a bank on another branch of the same bank and made payable to a third party are bills of exchange.<sup>11</sup>

*Instruments not bills of exchange.*—These have already been instanced above, in the course of discussion.

It was held in the case noted below<sup>12</sup> that orders upon tenants to hold themselves responsible to a particular person to whom a release has been made by their landlord were not documents which the law required to be stamped. It is clear that such a document will not be a bill of exchange either under the Negotiable Instruments Act or under the extended definition under this sub-section. The reason is that such an order is not a direction for the payment of any sum of money to any one, much less of any specific sum of money.

**12. Order for payment of money.**—As seen in Note 11, an *order* for the payment of money is the essence of a bill of exchange whether under the Negotiable Instruments Act or under the extended definition in sub-s. (2). It is true that the extended definition does not require, an *express* order for money. It is enough if in the circumstances of the case, the document is intended to operate as such.<sup>1</sup> But the fundamental notion is that of an *order*, that is to say, a *demand* and not a request.<sup>2</sup> But once it is clear that only a demand is meant—this can be seen from the relation in which the parties stand to each other and other circumstances—it is not material how exactly the document is worded. Thus, a draft in these terms “A will much oblige B by paying to C or order £2 on his account” was held to be a bill of exchange.<sup>3</sup>

The word “pay” itself need not be used. “Credit” so-and-so, or any like term may be equally effective.<sup>4</sup> See also illustrations in Note 11.

10a. ('12) 13 Ind Cas 330 (330) (FB) (Lah), *In re Stamp Act*. (Such receipt is not a cheque as it is not a bill of exchange.)

11. ('28) 15 AIR 1928 Cal 566 (568). 56 Cal 233: 115 Ind Cas 177 (SB), *In the matter of Stamp Act*.

Also see Art. 13 Note 3.

[See however (1850) 137 E R 1015 (1017): 19 L J C P 305: 15 L T (os) 91, *Allen v. Sea, Fire and Life Assurance Co.* (Order by company to its cashier to credit a certain person's account with a certain sum of money was held to be a promissory note.)

(1841) 133 E R 1271 (1273): 11 L J C P 21, *Miller v. Thomson*. (An instrument in the form of a bill of exchange, drawn upon a joint stock bank by the manager of one of its branch banks, by order of the directors, is a promissory note.)]

12. ('76) 25 Suth W R 80 (80) (DB), *Bukshee Kunneelall v. Maharanee Thakoornath Sai*.

Section 2 (2) & (3)—NOTE 12

1. (1894) 2 Q B 142 (148): 70 L T 667: 42 W R (Eng) 542, *Rothschild and Sons v.*

*Commrs. of Inland Revenue*. (Mandate directed by one man to another not necessary.)

[See ('30) 17 AIR 1930 Cal 697 (699): 57 Cal 695: 129 Ind Cas 305 (DB), *Jogesh-chandra v. Md. Ibrahim*. (Document worded like a promissory note but designated a *hundi* was, in the circumstances of the case (certain persons having signed as “acceptors”) held to be a bill of exchange—*Lloyd v. John Edward Oliver*, (1852) 18 Q B 471: 21 L J Q B 307 followed.)]

2. (1828) 31 R R 726 (727): 173 E R 1120, *Little v. Slackford*. (A paper in these words, “Mr. L., please let the bearer have £7 and place it to my account, and you will oblige your humble servant R.S.” was held not to be a bill of exchange—Lord Tenderden C. J. “The paper does not purport to be a demand made by a party having a right to call on the other to pay. The fair meaning is ‘you will oblige me by doing it.’”)

3. (1794) 5 R R 723 (724): 170 E R 301, *Ruff v. Webb*.

4. Halsbury, *Laws of England*, Vol. 2, page 469, para. 792.



**13. Order for payment out of a particular fund.**—As will be seen in Note 14, an order to pay out of a particular debt owed by the person ordered to the person ordering will not in the absence of a special kind of relationship between the parties, be a bill of exchange.

But an order for payment out of a particular fund which may or may not be available will be a "bill of exchange payable on demand," by virtue of the special provision contained in sub-section (3).

**14. Order for payment and assignment of debt—Distinction.**—Whether for the purposes of the Negotiable Instruments Act or under the extended definition under sub-s. (2), a bill of exchange is in its essence, a direction, whether express or implied in the circumstances of the case, for payment of money. This presupposes the existence of funds in the hands of the person directed which he is bound to dispose of according to the directions of the person entitled to the funds.

It must be noted that it is not in every case where A owes money to B that A is bound to apply the money as B may direct him to do. A's normal obligation is only to repay the money to B. An obligation to pay according to B's directions can only arise by special contract or out of special relations existing between the parties as for instance, between a banker and his customer.

Hence, where A owes money to B and is not under any special obligation of the above type, an order or direction by B to A to pay the money or any sum out of it to C will not be a bill of exchange. Such an order will only amount to an assignment of the debt. The above position is, on the whole, supported by the case-law on the subject though there are some decisions which seem to conflict with this view.

Thus, in *Brice v. Bannister*<sup>1</sup> a contract had been entered into between B and G, a ship-builder, under which the latter was to build a vessel for B; the price to be paid by certain instalments corresponding with certain stages in the construction of the vessel, the last on its final completion. The last stage having been entered on, G delivered to his creditor a letter addressed to B in these terms: "I do hereby order, authorize, and request you to pay to Mr. . . . the sum of £100 out of moneys due or to become due from you to me, and his receipt for the same shall be a good discharge." It was held by Cotton and Bramwell, L.JJ., Brett, L. J., dissenting, that by the effect of the letter, an assignment of the debt was made to the creditor which could not be affected by payments afterwards made to the assignor by the debtor. A similar view was expressed in the cases mentioned below.<sup>2</sup>

In *Ex Parte Shellard*,<sup>3</sup> however, such a document was held to be an order for the payment of money and consequently a bill of exchange. In that case, A and K,

Section 2 (2) & (3)—NOTE 14

1. (1878) 3 Q B D 569 (576, 577): 47 L J Q B 722: 38 L T 739: 26 W R (Eng) 670.

2. (1854) 104 R R 141 (143): 23 L T (OS) 181: 43 E R 893: 23 L J Ch 550: 2 W R (Eng) 500, *Diplock v. Hammond*. (A written authority signed by a creditor directed to his debtor and delivered to AB in this form: "I hereby authorize you to pay AB the sum of £365, being the amount of my contract at the new work house, he having advanced me that sum;" is a good assignment if stamped as such without being stamped as an order for payment.)

(1832) 131 E R 655 (656): 2 L J C P 21, *Crowfoot v. Gurney*. (S was indebted to I and G was indebted to S (for work done by S for G). S requested G to pay whatever might be due from G to S. G promised I to do so as soon as the amount was ascertained. After the amount had been ascertained, S became bankrupt. It was held that notwithstanding the bankruptcy of S, I might sue G for the amount of his debt to I. These circumstances amounted to an equitable assignment of the debt due from G to S.)

3. (1873) 17 E q 109 (112): 29 L T 621: 22 W R (Eng) 152.



who were carrying on some erection work for B company addressed the company as follows: "We shall be obliged by your paying J the sum of £200 out of money payable to us on the completion of our contract and his receipt shall be a discharge of the same." See also the undermentioned cases<sup>3a</sup> arising under the Stamp Act, 1815 (55 Geo. III, C. 184) expressing a similar view.

But the position was considered in a later decision in *Buck v. Robson*.<sup>4</sup> In that case, T contracted with J to build for him a steam launch for £80. T addressed a letter to J as follows: "I hereby assign to Messrs. R. & Sons the sum of £40 now due or that may hereafter become due in respect of the steam launch which I am building." It was held that T's letter was not an order for the payment of money, as J was under no obligation to apply T's money in his hands, as directed. The letter was however held to operate as an assignment of debt. In that case Cockburn, C. J., observed:

"In our acceptation of the term an order for the payment of money presupposes moneys of the drawer in the hands of the party to whom the order is addressed, held on the terms of applying such moneys as directed by the order of the party entitled to them. No such obligation arises out of the ordinary contract of sale. If a purchaser buys goods of a manufacturer or a tradesman, he undertakes to pay the price to the seller, not to a third party, who is a stranger to the contract, nor will the mere order or direction of the seller to pay to a third party impose any such obligation upon him; it is only when and because the right of the seller to the price has been transferred to the third party by an effectual assignment that the assignee becomes entitled as of right to the payment. . . . Being ourselves decidedly of opinion that an order from a creditor to his debtor under an ordinary contract for the price of goods, or for work and labour, or the like, to pay to a third party can confer a right on the latter only so far as it operates as an assignment of the debt, we feel ourselves warranted, on the authority of *Brice v. Bannister*<sup>4a</sup> in acting on that view, notwithstanding the decision in *Ex parte Shellard*."<sup>4b</sup>

The view taken in *Buck v. Robson*<sup>4c</sup> was subsequently re-affirmed by Jessel,

3a. (1847) 67 E R 1164 (1168): 6 Hare 261 (269), *Parsons v. Middleton*. (An order signed by A addressed to his bankers directing them to pay to B out of the balance due to him on the final arrangement of his account, a certain sum, held was in terms a direction to pay a sum out of a precarious fund.)

(1817) 106 E R 14 (15): 1 B and Ald 36 (39), *Firbank v. Bell*. (B directed C to pay out of the proceeds of his goods then unsold, in C's hands, a certain sum of money to D, which C consented to do, by letter to D—Held that these letters did not amount to an agreement between B and C but the order amounted to an order for the payment of money out of a fund, which might or might not be available within the meaning of 55 Geo. III, C. 184, Sch. Part I.)

(1817) 105 E R 1196 (1197): 6 M and S 144 (145), *Emly v. Collins*. (L being indebted to P and about to sell his property by auction, gave an order in writing signed by him and addressed to D (auctioneer), to pay to P, out of the produce of the sale of his goods and

furniture, £200 and interest, from 23rd June last, due to P, and also £110 due to P for goods sold, for which several sums the receipt of P was to be D's discharge. It was held this was an order for the payment of money out of a particular fund.)

(1820) 129 E R 887 (890): 2 Br & B 78, *Butts v. Swann*. (Payment out of particular fund—F and Co. directed S and Co. by letter: "We request you will pay to H. C. and Son, or their order, out of the first proceeds that became due of our stock of gunpowder now in your hands, £600 and charge the same to our account," the letter was held to be an order for the payment of money out of a future fund and not an agreement—*Firbank v. Bell*, (1817) 106 E R 14 followed.)

4. (1878) 3 Q B D 686 (691, 692): 48 L J Q B 250: 39 L T 325: 26 W R (Eng) 804.

4a. (1878) 3 Q B D 569 (576, 577): 47 L J Q B 722: 38 L T 739: 26 W R (Eng) 670.

4b. (1873) 17 Eq 109 (112): 29 L T 621: 22 W R (Eng) 152: 43 L J Bcy 3.

4c (1878) 3 Q B D 686 (691): 48 L J Q B 250: 39 L T 325: 26 W R (Eng) 804.



M. R., in *Fisher v. Calvert*<sup>5</sup> in which it was held that a letter written by the legatee under a will to the trustees under the will to pay a certain sum to a particular person was not a bill of exchange for the purpose of the Stamp Act of 1870 but was only an equitable assignment of a part of the legacy.

The decision in *Ex Parte Shellard* was, it has already been seen, expressly dissented from in *Buck v. Robson*. But in a still later decision,<sup>5a</sup> the opinion was expressed that *Ex parte Shellard* had been rightly decided and was distinguishable from *Buck v. Robson*. But the observation was only an *obiter dictum*.

As regards the other English decisions cited above as holding that in such a case there is an *order for payment* so as to constitute a bill of exchange, they seem to be explicable on the ground that they refer to orders for payment out of "a particular fund which may or may not be available" which, as under sub-s.(3), had been expressly included as "bills of exchange payable on demand" under the Stamp Act of 1815 under which the cases were decided.<sup>6</sup>

Hence, it seems to be fairly well settled under the English law that whatever amounts to an assignment of a debt or part of a debt is to be stamped as such and not as a bill of exchange.

The view expressed in *Buck v. Robson* has been followed in India, in the under-mentioned case.<sup>7</sup> In that case, D authorised P, his creditor, to receive on his behalf a sum of money due to him by A, for the supply of fodder. The letter authorising P ran as follows: "I, D, beg to apply that I have completely fulfilled the agreement to supply fodder and that the sum due to me on account should be made over on my behalf to P. He will sign on my behalf." It was held that the letter was not a bill of exchange but operated as an assignment of debt and must be stamped as a conveyance. See also undermentioned cases.<sup>8</sup>

In this connection, it must be noted that sub-s. (3) includes as "bills of exchange payable on demand" certain documents which cannot be supposed to be based on the assumption that the person who is asked to pay money to another is under an obligation to comply with the request—for instance, a letter of request (cl. (c)). This must be understood on the footing that sub-s. (3) does not enlarge the definition

5. (1879) 27 W R (Eng) 301 (301).

5a. (1878) 48 L J Bey 46 (47); 39 L T 259, *Ex parte Rowell*; *Re Whitting*. (A obtained an advance from his bankers and gave them a letter addressed to his tenants directing the tenants, when their rent became payable, to pay £200 to the bankers. A was adjudicated insolvent before the rent became payable—Held the letter did not bind the trustee in bankruptcy of A and was not an assignment.)

6. See (1883) 14 L R Ir 140, *Adams v. Morgan*. (This is the explanation given in this case.)

7. ('03) 27 Bom 150 (152, 153); 4 Bom L R 951 (SB), *Nandubai v. Gall*. (It was a transfer of property by D to his creditor P in consideration of the debt due to the latter and must be stamped as a conveyance.)

8. ('80) 4 Bom 333 (343), *Jadowji Gopal v. Jetha Shamji & Co.* (L drew upon his firm in Bombay a Jekhmi hundi for Rs. 4,000 in favour of P at N. The hundi was "drawn against" 29 bales of wool shipped at T, and

it was made payable eight days after the safe arrival of the ship at Bombay. P obtained from L a letter addressed to L's Bombay firm. After giving the details of the hundi, the letter ran: "On the safe arrival of the vessel do you be good enough to lend the goods and deliver the same to P and be good enough to pay any money if payable in respect of the hundi to P."—Held following *Burn v. Carvalho*, (1839) 41 E R 265 that the letter operated as an equitable assignment of the wool to P on the safe arrival of the vessel, as a security for the payment of hundi.)

(1878) 10 Ch D 615 (621) 27 W R (Eng) 385; 40 L T 179, *Ex parte Hal*; *In re Whitting*. (A letter by landlord, authorizing his bankers and requesting his tenants to pay a certain sum to the bankers, when their (tenants) rent became due, without making any reference to the consideration that passed for the authority, held not to amount to an equitable assignment as the consideration for the authority could not be proved.)



of a bill of exchange given in sub-s. (2). At the same time, sub-s. (3) includes as bills of exchange payable on demand documents which may not be bills of exchange under sub-s. (2). In other words, the meaning of a bill of exchange under sub-s. (2) is not affected by sub-s. (3).<sup>9</sup>

15. Banker's drafts.—See Note 11.

16. Interest coupons.—See Note 11.

17. Trader's chits.—In *Ratulal Rangildas v. Vrizzbhukhan Parabhuram*<sup>1</sup> decided under the Act of 1879, A agreed to lend money to B for payment of his trade debts, etc. In pursuance of the agreement, B gave his creditors chits addressed to A requesting him to pay the amounts mentioned therein. A paid the amounts. In a suit by A to recover the amount advanced, it was contended for B that the chits being *cheques* were inadmissible in evidence for want of stamp. It was held by the Full Bench that A was not a "banker" and the chits in question did not require a stamp. (See S. 2 (7).) The question whether the chits constituted bills of exchange within the meaning of this clause, was not gone into.

18. Master's direction to a servant to pay money to a person.—In the under mentioned case<sup>1</sup> it was held that a written direction given by a master to a servant for the payment of money belonging to the former in the hands of the latter was not an order for the payment of money within the scope of the terms used in Sch. A, Act X of 1862, as amended by Act XXVI of 1867. The reason given was that an "order for the payment of money" in the above context seemed to mean an instrument in the nature of a mercantile instrument similar to a draft or cheque.

The true position seems to be this. It cannot be laid down as an absolute proposition that a direction given by a master to a servant can in no case be a bill of exchange. It has been seen in Notes 4 and 11 that a bill of exchange can be drawn on oneself and there seems to be no reason why a bill of exchange cannot be drawn on one's agent or servant.<sup>2</sup> But every direction in writing to one's servant to pay money to another will not be a bill of exchange.

The question will depend on whether the direction is intended to be an act distinct from the payment. If a so-called direction is not an distinct from the payment, then, there is only payment and not an order for payment. A master's direction to the servant may be only part of the act of payment. The two acts may be so closely connected together that they cannot be treated as distinct but must be treated as forming only one act. In such a case there will be no bill of exchange. But, if the written direction is *distinct* from the payment, it will be a bill of exchange. In each case it will have to be determined on the facts and circumstances of the case whether it can be said from a broad common-sense point of view that there is a direction for payment distinct from the payment itself.

19. Barati chittis and Samachari chittis.—Samachari chittis in North-Western Provinces and Barati chittis in Bengal are a form of native instruments, similar to hundis. Not being hundis, they escaped duty under the Act of 1879. These

9. (1883) 14 L R Ir 140, *Adams v. Morgan*.  
Also see Note 21.

Reference from the Small Cause Court Judge of Allahabad.

Section 2 (2) & (3)—NOTE 17

1. ('93) 17 Bom 684 (685) (F 8).  
Also see S. 2 (1) Note 2 and S. 2 (7) Note 5.

Section 2 (2) & (3)—NOTE 18

1. ('69) 1 N W P H C R 143 (144) (DB).

2.. See however (1850) 137 E R 1015 (1017):  
19 L J O P 305: 82 R R 447: 15 L T (o s)  
91, *Allen v. Sea, Fire and Life Assurance Co.*  
(In this case, an order by a company to its cashier to credit a certain person's account with a certain sum after a certain time was held to be a promissory note.)



instruments would now constitute bills of exchange under the extended definition in sub-s. (2). See Note 11.

**20. Letters of credit.**—A letter of credit is an instance of a “bill of exchange payable on demand.” See S. 2 (3) (c). Section 2 (3) (c) describes it as “any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn.”

It was observed by Lord Brougham in *Orr & Barber v. Union Bank of Scotland*,<sup>1</sup> “There is nothing in the mercantile law or the custom of merchants, to distinguish letters of credit from any other authority to pay money.”

The nature of a letter of credit was concisely explained by Story in a well-known passage of his commentaries on the *Law of Bills of Exchange*.<sup>2</sup> That passage runs as follows: “In respect of letters of credit, which are in common use in our commerce with foreign countries, it may be stated that a letter of credit (sometimes called a bill of credit) is an open letter of request, whereby one person (usually a merchant or a banker) request some other person or persons to advance moneys, or give credit to a third person, named therein, for a certain amount, and promises that he will repay the same to the person advancing the same, or accept Bills drawn upon himself, for the like amount. It is called a general letter of credit, when it is addressed to all merchants or other persons in general, requesting such advance to a third person; and it is called a special letter of credit, when it is addressed to a particular person by name, requesting him to make such advance to a third person.”

Letters of credit are to receive a liberal construction and are not to be construed with technical nicety.<sup>3</sup>

Letters of credit are not negotiable instruments, nor are they transferable.<sup>4</sup>

It will thus be seen that a letter of credit is not a bill of exchange as defined in sub-section (2). (See Note 21.) But by virtue of the special provision in sub-section (3) it is a “bill of exchange payable on demand” for purposes of this Act.

**21. Bill of exchange payable on demand.**—A bill of exchange payable on demand is one which is expressed to be so payable<sup>1</sup> or in which no time is fixed for payment<sup>2</sup> in which latter case, the bill is regarded under S. 19, Negotiable Instruments Act, as being payable on demand. Under S. 21, Negotiable Instruments Act, the expressions “at sight” and “on presentment” in a bill of exchange mean “on demand.”

#### Section 2 (2) & (3)—NOTE 20

1. (1854) 149 R R 47 (51): 24 L T (os) 1.
2. 4th Edn., S. 459, p. 573. (Cited in ('24) 11 AIR 1924 Cal 552 (554): 51 Cal 43).
3. ('24) 11 AIR 1924 Cal 552 (554): 51 Cal 43: 79 Ind Cas 757 (DB), *Chandanmul Benganey v. National Bank of India*.
4. (1854) 149 R R 47 (54): 24 L T (os) 1, *Orr and Barber v. Union Bank of Scotland*. Also see Davar's *Law and Practice of Banking*, 3rd Edn., page 208.

#### Section 2 (2) & (3)—NOTE 21

1. ('28) 15 AIR 1928 Cal 566 (568): 56 Cal 233: 115 Ind Cas 177 (SB), *In the matter of*

#### Stamp Act.

2. ('18) 47 Ind Cas 561 (561) (Rang), *In re M. A. Raiburn and Co.* (Order on a firm of Chetties directing the firm to pay a specified sum of money to a certain person or bearer is a bill of exchange payable on demand.)  
[See also (1876) 1 App Cas 554 (564): 35 L T 414: 45 L J Q B 852: 24 W R (Eng) 1049, *Misa v. Currie*. (A draft drawn for the amount of bills of exchange, purchased for transmission abroad, which amount by the usage of bill brokers is due on the first foreign post day next after the purchase, and which draft was dated as of that day, is an order for the payment of money on demand and is sufficiently stamped with 1d. stamp.)]



Besides the above categories, a bill of exchange payable on demand includes the documents enumerated in sub-section (3).

Thus, a document may be a "bill of exchange payable on demand" although it is not one of the documents mentioned in sub-section (3). Because, S. 2 (2) is *general* and includes both types of bills of exchange, those that are payable on demand and those that are not. Sub-section (3) merely explains the expression "bills of exchange payable on demand" as *including* certain deeds.<sup>3</sup> Its object is not to exclude any document which otherwise would be a bill of exchange payable on demand. Thus, an order in writing to a bank by a customer of the bank to transfer a sum of money from the account of the customer to the account of another customer of the same bank was held to be a bill of exchange payable on demand although such a document was not covered by the provisions in the English Stamp Act of 1891 which corresponded to sub-section (3).<sup>4</sup>

At the same time, a document may be a "bill of exchange payable on demand" as being covered by sub-section (3) although it may not fulfil the requirements of a bill of exchange as defined by sub-section (2).<sup>5</sup>

Thus, a letter of credit or an order for the payment of money out of a particular fund which may or may not be available or upon the happening of a contingency which may or may not happen is a "bill of exchange payable on demand." But such a document is not a bill of exchange even under the extended definition in sub-section (2) as a bill of exchange must essentially be a document unconditionally entitling a person to payment of money by another on the footing that the latter is bound to apply the money in his hands according to the directions of the person issuing the document. (See Note 11.)

Sub-section (3) cannot be regarded as extending still further, the already wide and comprehensive definition of a bill of exchange under sub-section (2). Sub-section (2) must be construed independently of sub-section (3), and must not be construed as necessarily including within the definition of bill of exchange the documents mentioned in sub-section (3). Sub-section (3) must be merely treated as *adding* to the category of "bills of exchange payable on demand" certain documents which might not otherwise have fallen under such category.<sup>6</sup>

The distinction drawn between bills of exchange payable on demand and bills of exchange not so payable, is material for purposes of stamp duty. Prior to 1st of July 1927, the instruments falling under the first class were liable under Sch. I Art. 13 (a) to stamp duty of one anna. After that date, such instruments are exempt from any stamp duty. Those included in the second class are chargeable with *ad valorem* stamp duty under Sch. I Art. 13. (See Notes on Sch. I Art. 13.)

#### Bill of exchange payable to bearer on demand.

Under S. 31 of the Reserve Bank of India Act, II of 1934, a private person is prohibited from drawing or accepting any bill of exchange including a hundi payable to bearer on demand. But under the same section, cheques or drafts including hundis, payable to bearer on demand, may be drawn on a person's account with a banker,

3. See (1896) 65 L J Q B 372 (377) : (1896) 1 Q B 542 : 74 L T 209 : 44 W R (Eng) 516, *London Clearing Bankers v. Commissioners of Inland Revenue*. (Case under English Stamp Act, 1891, S.32 which is analogous.) Also See Note 4.

4. (1896) 65 L J Q B 372 (377, 378) : (1896) 1

Q B 542 : 74 L T 209 : 44 W R (Eng) 516, *London Clearing Bankers v. Commissioners of Inland Revenue*. (Case under S. 32, English Stamp Act, 1891, which is analogous.)

5. (1883) 14 L R Ir 140, *Adams v. Morgan*. Also see Note 14.

6. (1883) 14 L R Ir 140, *Adams v. Morgan*.



shroff or agent.<sup>7</sup> This Act repeals the Paper Currency Act, 1882, which also contained a similar prohibition.

**22. Payability on demand—Admissibility of external evidence as to.**—In determining the question whether a particular bill is payable on demand or not, the Court should only look at the instrument as it stands. It is not permissible to import any extraneous evidence to interpret an instrument.<sup>1</sup> In the undermentioned case<sup>2</sup> decided before the abolition of duty on bills of exchange payable on demand in 1927, the instrument in question purported to be a hundi for Rs. 1,000 payable at sight, and stamped with one anna as required under the then existing law. In the course of evidence it appeared that there was a practice in the district for borrowers of money to give the lenders a document in this form in order to evade higher stamp duty. It was held by the High Court of Bombay that the instrument as it stood was duly stamped.

See also Notes on S. 3.

**23. Stamp duty on bills of exchange.**—See Note 21 and Sch. I Art. 13.

**24. Alteration of bill or note.**—See Notes on S. 14.

**\*(4) “bill of lading” includes a “through bill of lading,” but does not include a “Bill of lading.” mate’s receipt:**

#### Synopsis.

1. “Bill of lading.”
2. “Through bill of lading.”
3. “Mate’s receipt.”
4. Charter party. See Sch. I, Art. 20.
5. Stamp duty. See Sch. I, Art. 14.

**1. “Bill of lading.”**—A bill of lading was defined in the General Stamp Act (xviii of 1869), S. 3 (4), as follows :

“‘Bill of lading’ includes every instrument signed by the owner of a ship or his agent, acknowledging the receipt of goods therein described and undertaking to deliver them at a port and to a person therein mentioned or indicated.”

This definition was retained in the Stamp Act of 1879 (I of 1879) with only some verbal changes : the words “ship,” “them” and “port” were replaced by the words “vessel” “the same” and “place.” The present Act has omitted the definition and only mentions that a bill of lading includes a “through bill of lading” but does not include a mate’s receipt.

Under the English Law, a bill of lading means a document signed by the shipowner, or by the master, or any other agent of the shipowner which states that

**\*[1879—S. 3 (3) ; 1869—S. 3 (4).]**

**7. Section 31 of the Reserve Bank of India Act, 1934, runs as follows :**

“31. No person in British India other than the Bank or, as expressly authorised by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person :

Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person’s account with a banker, shroff or agent.”

**Section 2 (2) & (3); NOTE 22—S 2 (4) N 1**

1. ('03) 27 Bom 279 (280) : 5 Bom L R 28 (SB), *Sakharam Shankar v. Ramchandra Babu*.
2. ('03) 27 Bom 279 (280) : 5 Bom L R 28 (SB), *Sakharam Shankar v. Ramchandra Babu*.



certain specified goods have been shipped upon a particular ship, and which purports to set out the terms on which the goods have been delivered to and received by the ship.<sup>1</sup> This definition has been adopted in India in the undermentioned case<sup>2</sup> which was decided under the present Act.

A bill of lading is, in the first instance, an acknowledgment of the receipt of the goods specified therein.<sup>3</sup> It is also a symbol of the right to property in the goods specified therein.<sup>4</sup> Its possession is equivalent to the possession of the goods themselves and its transfer being a symbolical delivery of the goods has the same effect as an actual delivery in the same circumstances.<sup>5</sup>

A bill of lading is usually drawn in a set of three. One copy is meant for use by the Captain of the vessel, another is transmitted to the consignee and the third is retained by the consignor.<sup>6</sup> Each of the three parts are required to be stamped under Art. 14.

It has been held in the undermentioned case<sup>7</sup> that bills of lading need not necessarily relate to carriage of goods by a *sea-going vessel*; they may be in respect of inland navigation also, and are therefore chargeable under Sch. I, Art. 14. The duty chargeable in respect of such documents has, however, been since remitted. (See Reductions and Remissions made by the Central Government, item No. 130 in Appendix D.)

2. "Through bill of lading."—Where goods have to be carried for a portion of the journey by land upon conveyance belonging to some person other than the shipowner it is the practice for the shipowner or other person with whom the contract of carriage has been made in the first instance to charge an inclusive rate for the voyage and the land transit, and to issue a document which is called a through bill of lading.<sup>1</sup> The contract is, in the absence of any statement in the document to the contrary, to be regarded as made solely with the owner of the ship or other person who issues it.<sup>2</sup>

3. "Mate's receipt."—When the goods are delivered to the ship the shipper is usually handed a written acknowledgment of their receipt on behalf of the ship. This acknowledgment is called the mate's receipt. It is *prima facie* evidence that goods specified therein have been delivered to and received by the ship. Possession of the receipt entitles the holder to receive a bill of lading.<sup>1</sup>

4. Charter party.—See Sch. I, Art. 20.

5. Stamp duty.—See Sch. I, Art. 14.

#### Section 2 (4)—NOTE 1

1. Halsbury, *Laws of England*, Vol. 26, p. 144.

(1884) 10 App Cas 74 (105): 54 L J Q B 156: 52 L T 445: 33 W R (Eng) 461, *Sewell v. Burdick*.

2. ('03) 30 Cal 565 (574) (SB), *Reference under Stamp Act of 1899*.

3. (1786) 1 T R 205 (216): 99 E R 1053: 1 R R 187, *Caldwell v. Ball*.

(1888) 20 Q B D 475 (479): 57 L J Q B 379: 36 W R (Eng) 537: 58 L T 908, *Leduc v. Ward*.

4. (1883) 11 Q B D 327 (341): 52 L J Q B 481: 49 L T 462: 31 W R (Eng) 698, *Sanders v. Maclean*.

5. (1883) 11 Q B D 327 (341): 49 L T 462: 31 W R (Eng) 698: 52 L J Q B 481, *Sanders v. Maclean*.

6. (1787) 2 T R 63 (72): 6 East 20: 100 E R 35, *Lick Barrow v. Mason*.

7. ('03) 30 Cal 565 (574) (SB), *Reference under Stamp Act of 1899*.  
Also see Art. 14 Note 1.

#### Section 2 (4)—NOTE 2

1. Halsbury, *Laws of England*, Vol. 26, p. 149.

2. (1870) 22 L T 615 (620, 621), *Greeves v. West India and Pacific Steamship Company*.

#### Section 2 (4)—NOTE 3

1. Halsbury, *Laws of England*, Vol. 26, pp. 151, 152.



“Bond.”                      \*(5) “bond” includes—

- (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;
- (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

#### Synopsis.

- |   |  |
|---|--|
| 1. Legislative changes.   | 11. Undertaking to deliver grain or other agricultural produce—Clause (c). |
| 2. Scope of the definition.   | 12. Covenants in deeds of transfer.  |
| 3. Conditional bond—Clause (a).   | 13. Instruments constituting both bond and some other documents.           |
| 4. Conditional bond and agreement with penal clause—Distinction as to stamp duty. | 14. Attested by a witness.   |
| 5. Simple money bonds—Clause (b).   | 15. “Person.”  |
| 6. “Bond” and “promissory note.”  | 16. Bond by principal and surety. See Note 15 and Section 5, Note 9.       |
| 7. Bond and acknowledgment of debt.   | 17. Date of payment need not be stated.                                    |
| 8. Promise to pay time-barred debt.   | 18. Valuation for purpose of stamp duty.                                   |
| 9. Indemnity note.  |  |
| 10. Bond—Illustrative cases.  |  |

1. **Legislative changes.**—The early Stamp Acts, namely, Act XXXVI of 1860 and Act X of 1862 did not contain any definition of the term “bond.” The definition of the term occurs for the first time in Act XVIII of 1869, S. 3 (5) and was the same as clause (a) in the present definition.<sup>1</sup> This definition was held not to be exhaustive,<sup>2</sup> though in some decisions, documents not exactly falling within the definition were held not to be “bonds” for the purpose of the Act.<sup>3</sup>

The subsequent Stamp Act of 1879, section 3 (4), changed the word “includes” after the word “bond” into “means” and introduced two more clauses in the definition corresponding to clauses (b) and (c) of the present sub-section.

The definition in the present Act is the same as in the Stamp Act of 1879, except for the word “includes” into which the word “means” has again been altered.

Though there was no definition of the term in the Stamp Act of 1862, the stamp duty on various kinds of bonds was provided for by several articles in Sch. A of that Act. For example, Art. 12 of Sch. A provided for a “Bond or other obligation for the payment either absolutely or conditionally of any definite sum of money not otherwise charged for or expressly exempted from the payment of stamp duty in this schedule.” An instrument which recited that A sold a shop to B for Rs. 620 of which Rs. 25 were paid to A as earnest money, that A on receiving the balance of the purchase-money would execute the deed of sale and would not retract, and further that if A retracted, he would pay Rs. 50 to B, was held to be a conditional bond liable to be stamped under this article.<sup>4</sup>

\*[1879—S. 3 (4) ; 1869—S. 3 (5).]

#### Section 2 (5)—NOTE 1

1. ('82) 4 Mad 137 (140) : 6 Ind Jur 127 (DB), *Venkata Chinnaya v. Venkataramayya*.
2. ('82) 8 Cal 534 (536) (DB), *Nasiburn v. Preosunker Ghose*.
3. ('82) 8 Cal 284 (286) : 10 Cal L R 219 (DB), *Gisborne & Co. v. Subal Bowri*.

- (‘82) 4 Mad 137 (140) : 6 Ind Jur 127 (DB), *Venkata Chinnaya v. Venkataramayya*.
4. ('66) 1866 Pun Re (Civ.) No. 4 page 4 (4) (DB), *Mehtab Singh v. D. B. Canal*.
5. ('68) 5 Bom H C R (AC) 151 (153) (DB), *Samsuddin Sultan v. Ramji Bhika*.



Article 4 of the above schedule provided for "agreement to cultivate, manufacture, produce, provide or deliver any article in consideration of advance made." An agreement to supply cotton in consideration of a certain sum of money advanced, (which would be a *bond* under cl. (c) of the present definition) was held to be an *agreement* only, chargeable under the above Art. 4, and not a bond.<sup>5</sup>

**2. Scope of the definition.**—Under the English law, a bond is an instrument under seal, usually a deed poll, whereby one person binds himself to another for payment of a specified sum of money either immediately or at a fixed future date. The person who so binds himself is called the obligor and the person to whom he is bound, the obligee; and the instrument itself is sometimes called an obligation.<sup>1</sup> A bond is either a simple or single bond or a double or a conditional bond. Where it is merely for the payment of a certain sum of money without any condition in or annexed to it, it is called a simple or single bond. But such instruments are rarely met with in England at the present day. The ordinary form now in use is one accompanied by a condition in the nature of a defeasance, the performance of the condition being generally secured by a penalty. This form of bond is called a double or conditional bond. It consists of two parts, first, the obligation and second, the condition. The condition specifies the real agreement between the parties, that is to say the money to be paid or the acts or duties to be performed or observed, the payment, performance or the observance of which is intended to be secured by the bond, and provides that on the performance of the condition the bond shall be void.<sup>2</sup>

The following are the essential elements of a bond as defined in this sub-section :

- (1) the instrument must be one by which a person obliges himself, i.e., undertakes to do something;
- (2) the thing to be done must be the payment of money or the delivery of grain or other agricultural produce, but the instrument need not be for a definite sum of money;<sup>2a</sup>
- (3) a bond to pay money must be of one of two types, namely—
  - (a) it must contain a condition of defeasance as described in clause (a) or,
  - (b) it must be attested by a witness and must not be payable to order or bearer;
- (4) a bond to deliver grain or other agricultural produce must be attested by a witness.

It was observed by Garth, C. J., in *Gisborne and Co. v. Subbal Bowri*<sup>3</sup> "the definition of a bond in S. 5 of the Act (i.e., S. 3 (5) of the Act of 1869, which was the same as cl. (a) of the present definition) is precisely what we understand by a bond in England." Thus, cl. (a) provides for bonds as ordinarily understood under the English law.

But the definition of "bond" in the Stamp Act as given in the Act of 1879 as well as in the present Act is wider and covers both the single bond and the double or the conditional bond of the English law.

#### Section 2 (5)—NOTE 2

1. Halsbury, *Laws of England*, Vol. 3, Para. 158.

2. Halsbury, *Laws of England*, Vol. 3, Paras. 159, 160.

2a. ('97) 1897 Bom P J 382 (FB), *Adarji*

*Dorabji v. Rajaram Jhurakhanlal*. (Promise to pay a certain percentage.)

3. ('82) 8 Cal 284 (286) : 10 Cal L Rep 219 (DB).

[See also ('09) 5 Low Bur Rul 102 (105) : 4 Ind Cas 293 (FB), *Yeo Eng Pwa v. R. M. A. R. R. M. Chetty Firm.*]



The Legislature has also changed the word "means" in the definition of bond in the Act of 1879 into the word "includes" in the present definition. The use of the word "includes" serves a double object. It shows that the definition here given includes matters that are not bonds under the English law which is usually adopted for the purpose of determining the meaning of legal expressions in English in the absence of any statutory definition.<sup>4</sup> It further shows that even this extended definition is not exhaustive,<sup>5</sup> and that the term may include instruments which are not strictly covered by the definition. Thus, in the case noted below<sup>6</sup> by an instrument attested by a witness, the executant took upon himself the liability of another person in respect of a debt of Rs. 1000 and agreed to get certain lands mortgaged to the creditor in lieu of that sum, and further that if he failed to do so, he would pay the said sum of Rs. 1000 with interest. It was held that the document was a bond with a condition, even though it did not come exactly within the definition.

Similarly, an agreement containing a simple obligation to pay money, may be a "bond" though it is not "attested."<sup>7</sup> But Art 15 is expressly confined to bonds as defined in this sub-section.

In *Wadhawa Mal v. Karim Baksh*<sup>8</sup> forty maunds of wheat were advanced to defendants who agreed in writing to repay the same with interest in kind. The question for determination was whether the instrument was a bond within the meaning of the Limitation Act, as otherwise the suit would stand dismissed as barred by limitation under Art 65 of that Act. It was held by a Division Bench of the Lahore High Court that neither the Stamp Act nor the Limitation Act contained any exhaustive and complete definition of the term "bond"; that the instrument in question was clearly a bond within the definition in the Stamp Act and was therefore a bond also for the purpose of the Limitation Act on the principle that "the language of every enactment must be construed as far as possible in accordance with the terms of every other statute which it does not expressly modify or repeal." It will be seen that such a bond would fall under cl. (c) of this sub-section. But it will not fall under the definition in S. 2 (3) of the Limitation Act which confines the term to bonds of the type mentioned in cl (a). Nevertheless it was held that it was a bond for the purpose of the Limitation Act also. (See A. I. R. Commentaries on the Limitation Act, 2nd (1942) Edn., S. 2 (3) Note 1 for the criticism of this case.)

In deciding whether an instrument does or does not fall within the purview of "bond" as defined by this sub-section, the instrument must be considered as a whole and it is not permissible to divide it into several parts and look at it piecemeal and then to assign each one of such parts to some other article in Sch. I of the Act.<sup>9</sup>

4. See ('16) 3 AIR 1916 Low Bur 100 (101) : 8 Low Bur Rul 382 : 33 Ind Cas 920 (DB), *Collector of Rangoon v. Maung Aung Ba.* (Where the Legislature intended that the words should cover possibly more than they would under the English Law, the word 'includes' is used in the definitions in Section 2 instead of the words 'means'.)

5. ('31) 18 AIR 1931 All 392 (393) : 133 Ind Cas 157 (FB), *In the matter of Raj Balamgir.* ('25) 12 AIR 1925 Lah 415 (415, 416) : 6 Lah 276 : 86 Ind Cas 844 (DB), *Wadhawa Mal v. Karim Baksh.*

('40) 27 AIR 1940 Nag 240 (240) : 188 Ind Cas 638, *Ramchandra Dhondbaji v. Jhibal Sheoram.*

('41) 28 AIR 1941 All 243 (254) : I L R (1941) All 471 : 195 Ind Cas 791 (FB), *L. H. Sugar Factory, Pilibhit v. Moti.*

[See ('82) 8 Cal 534 (536) (DB), *Nasbun v. Preosunkar Ghose.* (Case relating to S 3 (5) of Act of 1869—Definition not exhaustive.)]

6. ('20) 7 AIR 1920 Lah 481 (482), *Nand Lal v. Karam Chand.*

7. ('40) 27 AIR 1940 Nag 240 (240) : 188 Ind Cas 638, *Ramchandra Dhondbaji v. Jhibal Sheoram.*

8. ('25) 12 AIR 1925 Lah 415 (415, 416) : 6 Lah 276 : 86 Ind Cas 844 (DB).

9. ('41) 28 AIR 1941 All 243 (259, 263) : I L R (1941) All 471 : 195 Ind Cas 791 (FB), *L. H. Sugar Factory, Pilibhit v. Moti.*



### 3. Conditional bond—Clause (a).

Clause (a) only applies to documents with conditions of defeasance.

As seen in Note 2, cl. (a) describes what would be a double bond or conditional bond under the English law. The following illustrations will show what kinds of documents are contemplated by this clause :

- (1) A promises to pay Rs. 50 to B on condition that the bond shall be void if A delivers to B a certain article by a certain date.
- (2) A promises to pay Rs. 50 to B on condition that the bond shall be void if he pays Rs. 25 by a certain date.
- (3) A promises to pay Rs. 50 to B on condition that the bond shall be void if A does *not* leave Nagpur before a certain date.
- (4) A promises to pay Rs. 50 to B if A leave Nagpur before a certain date.
- (5) A promises to pay Rs. 50 to B if he does not deliver a certain article to B by a certain date.
- (6) A promises to pay Rs. 50 to B if he does not pay him Rs. 25 by a certain date.
- (7) A promises B to deliver a certain article to him before a certain date and in default, to pay him Rs. 50.
- (8) A promises B to pay Rs. 25 by a certain date and on default, to pay Rs. 50.
- (9) A promises B not to leave Nagpur before a certain date and if he does so, to pay B Rs. 50.

Illustrations 1, 2 and 3 come under clause (a) and the other illustrations do not. Illustrations 1 and 2 are bonds which are to become void if a specified act is done. Illustration 3 is a bond which is to become void if a specified act is *not* done. In all these cases, the document purports to create *forthwith* an obligation to pay money which obligation, however, is liable to be defeated by the fulfilment of a specified condition. According to the tenor of the document, the fulfilment of the condition is not necessary for the *creation* of the obligation. The fulfilment of the condition, on the other hand, renders the obligation already brought into existence void. In other words, the condition in such cases is a *condition subsequent* operating as a condition of defeasance.<sup>1</sup>

Illustrations 1, 2 and 3 show that the specified act, on the performance or non performance of which the bond is to become void, may be the payment of money.

Illustrations 4, 5 and 6 are agreements to pay money *if a specified act is or is not done*. In such cases there is no *initial* obligation to pay. The obligation arises only if the specified act is or is not done. In other words, the performance or non-performance of the act is a *condition precedent* for the coming into existence of the obligation under the document. Such cases are not within clause (a).

Illustrations 7, 8 and 9 are agreements with a penal clause. Such cases also are not within clause (a).

Thus, the above illustrations fall into three groups :

- (a) Obligations to pay money subject to be rendered void by the fulfilment of a certain condition subsequent; illustrations 1, 2 and 3.
- (b) Obligations to pay money which are to come into existence on the fulfilment of a condition precedent; illustrations 4, 5 and 6.
- (c) Agreements with a penal clause; illustrations 7, 8 and 9.

Group (a) falls under cl. (a). But groups (b) and (c) do not.

#### Section 2 (5)—NOTE 3

1. See Anson, *Law of Contract*, 18th Edn.,

1937, page 58.  
Leake, *Contract*, 8th Edn., 1931, pages 102, 103.



In all the three sets of cases, the real object of the transaction is the same, namely, to secure the performance of or forbearance from a certain act by the imposition of a penalty. It is only the *form* of the document in which the transaction is expressed that is different.

In cases under this clause (group (a)) what is really the *penalty* is expressed as the *obligation* under the document and the act or forbearance which is intended to be secured is embodied as the *condition* on which the obligation is to become void.

In group (b) also, the penalty is expressed as itself a substantive obligation under the document and the act or abstinence intended to be secured is expressed as a condition, the non-fulfilment of which is to give rise to the obligation.

In group (c), there is no camouflage and the document expresses the real intention of the parties as it is, the penalty being expressed as the penalty and the act or abstinence intended to be secured being expressed as the substantive obligation under the document.

Though the real object and substantial nature of all the kinds of documents above considered is thus the same, it is only documents in the *particular form* described in cl. (a), (illustrations 1, 2 and 3) that will be covered by that clause. (See Note 4.) In other words, it is not enough for the applicability of clause (a), that the substantial effect of a document is the same as that described in the clause. Obviously, the clause refers to what will be *technically* a double or conditional bond under the English law and the *form* of the document must be held to be an essential element of its applicability.

Other forms of conditional agreements may also be "bonds" in general sense.

But the *other* forms of documents above illustrated may also be "bonds" in the general sense of the term, though they will not be bonds for the purpose of the particular definition contained in this clause. Thus, a covenant to execute a sale-deed of a certain property and in default, to pay a specified sum of money was held to be a conditional bond within the meaning of Art. 12, Schedule A of the Stamp Act of 1862.<sup>2</sup>

Even under the present Stamp Act, it has been held that the definition in this sub-section is not exhaustive and that an agreement to do a certain act and in default to pay a certain sum of money may be a bond.<sup>2a</sup>

See also illustrations (d) and (g) under S. 74, Contract Act, which expressly use the word "bond" to describe agreements with a penal clause. So also, bail-bonds, security bonds, etc., are clearly "bonds" though they may be in form agreements with a penal clause (illustrations 7, 8, 9) and are not covered by clause (a).

But, for the purpose of Art. 15, Sch. I, a document which is only an agreement with a penal clause will not be a bond. This is because that article is expressly limited to bonds "as defined in S. 2 (5)."

No fundamental difference between documents covered by clause (a) and other conditional agreements to pay money.

In some decisions, however, the view seems to be taken that there is a fundamental difference between a "bond" and an ordinary contract and that a covenant with a penal clause can never be a bond." According to this view, it would seem, documents in illustrations 4 to 9 above will only be covenants with penal clauses and *not* "bonds." Thus, in *Gisborne and Co. v. Subal Bowri*,<sup>3</sup> Garth, C. J., observed as follows :

"The definition of a bond in S. 5 of the Act (his Lordship was referring to S. 3 (5) of the Stamp Act of 1869 which was the same as the present clause (a) ) is precisely

2. ('66) 1866 Pun Re (Civ.) No. 4, p. 4 (4) v. *Karam Chand.*

(DB), *Mehtab Singh v. D. B. Canal.*

3. ('82) 8 Cal 284 (286, 287) : 10 Cal L R 219

2a. ('20) 7 AIR 1920 Lah 481 (482), *Nand Lal* (DB).



what we understand by a bond in England, and it is an obligation of a different character from a covenant to do a particular act, the breach of which must be compensated in damages.

“Whether a penal clause is attached to such a covenant or not, the remedy for the breach of it is in form and substance a suit for damages; and by S. 74 of the Indian Contract Act, the English rule with regard to liquidated damages is abolished, and the plaintiff in such a suit has no right under any circumstances to claim the penalty itself as such. He can only recover such compensation, not exceeding the amount of the penalty, as the Judge at the trial considers reasonable; but he is entitled to that compensation, whether he proves any actual damages or not.

“The remedy upon a bond is very different. The plaintiff in the case of a simple money-bond recovers the sum named in the bond, or in the case of a bond conditioned for the performance of covenants, he recovers the actual damage which he can prove that he has sustained. In either case not only is the bond a contract of a different form and nature from a covenant with a penal clause, but the remedy upon it, and the amount recoverable for the breach of it, is also different.”

Similarly, in *Collector of Rangoon v. Maung Aung Ba*<sup>4</sup> Fox, C. J., observed as follows :

“A distinction between an obligation under a bond and an obligation under an ordinary contract is that breach of an obligation under a bond does not, to use a legal expression, ‘sound in damages’ whereas ‘damages’ is what one who breaks an ordinary contract is subjected to.”

It is submitted with respect that under the Indian law there does not seem to any fundamental difference between bonds and other forms of contracts as regards the remedies open to the aggrieved party on breach of the contract.

The position under the English law has been summarised in Anson's *Law of Contract* as follows<sup>5</sup>:

“Common law has differed from Equity in its treatment of bonds much as it did in its treatment of mortgages.

Common law took the contract in its literal sense and enforced the fulfilment of the entire promise upon breach of the condition.

Equity looked to the object which the bond was intended to secure, and would restrain the promisee from obtaining more than the amount of money due under the condition, or the damages which accrued to him by its breach.

Statutes have long since limited the rights of the promisee to the actual loss sustained by breach of the condition.”

Thus, under the English law, by virtue of statutory provisions, the remedy in the case of a bond is the *actual damage* caused by breach of the condition.

But there are no similar statutes of a special character in India, applicable to conditional bonds. Hence, under Indian law, the matter seems to be entirely governed by S. 74 of the Contract Act under which proof of *actual damage*—the point of distinction made by Garth, C. J., in *Gisborne & Co.'s* case—is expressly made unnecessary.

4. (1916) 3 AIR 1916 Low Bur 100 (101) : 8 5. 18th Edition, 1937, page 59.  
Low Bur Rul 382 : 33 Ind Cas 920  
(DB).



As already stated above, there are indications in S. 74 of the Contract Act itself to show that it applies to "bonds." See the "Exception" which shows that but for such express provision, the "bonds" referred to therein would have been within the section. See also illustrations (d) and (g) to that section.

It is true that the kind of bonds described in clause (a) of this sub-section does not occur in the illustrations under S. 74, Contract Act. It may also be questioned whether the words of S. 74 will cover agreements in the particular form mentioned in clause (a) of this sub-section. But it is conceived that the words of S. 74 will cover any contract which is *substantially* of the nature described therein.

That the bond mentioned in clause (a) is *substantially* of the nature of the contract described in S. 74, Contract Act, there is no doubt. It is agreed on all hands that the substance of such transactions is (as already stated) that the so-called "obligation" under the bond is only the penalty and the real substantive agreement is as to the act or forbearance expressed in the "condition" portion of the document. Hence the real nature of such a transaction is nothing but a covenant with a penal clause to which S. 74 of the Contract Act directly applies.

#### Conclusion.

Thus, to sum up, the kind of documents illustrated above are not capable of being classified as regards the *remedies* applicable for their enforcement. The differences are only of *form* and not of substance. But unless the particular form mentioned in cl. (a) is satisfied, that clause will not apply. Nevertheless, the document may be a "conditional bond" in the *general* sense of the term.

#### Some illustrative cases.

An instrument contained an agreement that the executant would pay a certain amount to his pleader, in addition to what he had already paid him if the case ended successfully but that if it failed, he would pay nothing. It was held that this was a "bond" as defined by S. 3 (5) of the Act of 1869<sup>6</sup> which was the same as clause (a) now. It is submitted that the decision is wrong. Because, the document creates an obligation which is to arise only on the happening of a certain condition and not one which is to be rendered void by a condition subsequent. Even assuming that the document contains an obligation which is to be rendered void by a condition subsequent, the condition is not anything which the *obligor*, i.e. the client is to do or forbear to do. Clause (a) contemplates an act or forbearance by the *obligor*, because it is as a security for such act or forbearance that he executes the bond.

A owes money to B on some promissory notes. A and B enter into an agreement under which A promises to pay a certain sum of money to B and the latter promises not to sue on the promissory notes in lieu of which the agreement is entered into. The agreement is not a conditional "bond" under clause (a).<sup>7</sup> The agreement by B not to enforce the original promissory notes is in no sense a *condition* as contemplated by clause (a). It is only the *consideration* for the promise by A.

6. ('70) 1870 Pun Re No. 82, page 209 (210) (DB), *Spencer v. Emamooddeen*.

[See also ('97) 1897 Bom P J 382 (FB), *Adarji Dorabji v. Rajaram Jhurakhanlal*. (A who had to pay Rs. 1,53,205 to the Government for liquor contract agreed by a written and attested instrument with B who, by his own efforts and expenses, was to obtain for A, a remission in the payment, to pay for his efforts, at the rate of 3 annas in a rupee out of the remission obtained for A—Instrument was held to be a bond and

not an agreement—*Held*, by Farran J., that the objection that the condition upon which the bond is to be operative is to be brought about by the action of the *obligee* is not material as clause (a) includes within the class of bonds instruments payable on condition that an act is performed without defining who is to perform it.)]

7. ('09) 5 Low Bur Rul 102 (106) : 4 Ind Cas 293 (FB), *Yeo Eng Pwa v. R.M.A.R.R.M. Chetty Firm*.



It has been held by the Madras Revenue Board that an engagement taken from licensed stamp vendors should be stamped as "bonds."<sup>8</sup>

**4. Conditional bond and agreement with penal clause—Distinction as to stamp duty.**—It has been seen in Note 3 that an agreement to do or forbear from doing a certain act with a penal clause providing for the payment of a certain sum of money on breach of the agreement is not a conditional bond as defined in this sub-section. Hence, such an agreement is liable to be stamped not as a bond but as an agreement.<sup>1</sup> This is now made clear by Art. 15 of the Schedule which is expressly limited to bonds as defined in this sub-section.

**5. Simple money bonds—Clause (b).**—As seen in Note 2 a bond is essentially an instrument by which a person "obliges himself" to do something. Hence, in the case of a simple money bond under cl. (b), also, the important element is that the document must be one by which a person obliges himself to pay money to another. Their Lordships of the Calcutta High Court in *Hira Lal Sircar v. Queen-Empress*<sup>1</sup> observe:

"The important word in this definition is the word 'obliges' and no document can be a bond within it unless it is one which itself creates an obligation to pay money, as is the case with these documents which are known as bonds according to the common use of the word, but is not the case with acknowledgments of advances, or of the purchase and receipt of goods, the obligation to pay for which is not created by the instrument, but arises from the promises to repay advances and to pay for goods, which the law always implies when money is borrowed or goods are purchased."

The distinction between an acknowledgment, pure and simple, and a bond is, therefore, this: a bond is an instrument in which the obligation to pay money is created *expressly* and not *impliedly*,<sup>2</sup> while acknowledgments are those documents which *by themselves do not create any obligation to pay money* but in which such obligation is implied by law.<sup>3</sup> The fact that an obligation to pay money to another is implied by law in an acknowledgment cannot convert a document which is a mere

8. ('33) Mad S M p. 84 (84). (Citing, B P 1701, 28th July 1886.)

S 2 (5)—NOTE 4

1. ('27) 14 AIR 1927 Nag 72 (74): 98 Ind Cas 631, *Collector of Nimar v. Lakhmichandsa*. ('67) 5 Suth W R (S C C) 10 (13) (DB), *John Doyle v. Mundaree Mundul*.

('71) 7 Beng L R 510 (512), *Robert and Charrial v. Shircore*.

\*('82) 8 Cal 284 (287): 10 Cal L R 219 (DB), *Gisborne & Co. v. Subal Bowri*. (Agreement for cultivation of indigo with provision for payment of damages in case of breach of agreement.)

('37) 12 Luck 131 (133): 161 Ind Cas 420 (DB), *Sundar Lal v. Thakur Gandharp Singh*. (Document described as Satta and stipulating for the supply of certain quantity of sugarcane juice at a certain rate for a certain period—Condition for payment of damages at a certain rate in case of breach of agreement—Held that the deed was an agreement and not a bond—8 Cal 284 relied on.)

('91) 14 Mad 18 (20), *Madras Railway Co. v. Rust*. (Agreement for service with provision for penalty in money, not chargeable with duty for bond.)

('16) 3 AIR 1916 Low Bur 100 (101): 8 Low Bur Rul 382: 33 Ind Cas 920 (DB), *Collector of Rangoon v. Maung Aung Ba*. (An agreement to deliver merchandise for consideration and a penal clause providing against breach of the covenant is not a bond but an agreement under Art. 5 (c) and falls within exemption (a) of that Article.)

Also see Art. 5, Note 6.

[But see ('79) 2 All 654 (663): 5 Ind Jur 264 (FB), *Reference by Board of Revenue*.]

S 2 (5)—NOTE 5

1. ('95) 22 Cal 757 (759) (DB).

2. ('88) 1888 Bom P J 128 (DB), *Ranchordas v. Bhimbhai*.

('82) 1882 Bom P J 29, *Sukalchand v. Gulabchand*.

3. ('95) 22 Cal 757 (759) (DB), *Hira Lal v. Queen-Empress*.

('34) 21 AIR 1934 Nag 261 (262): 31 Nag L R 108: 153 Ind Cas 952, *Chhaganlal v. Emperor*.

('38) 25 AIR 1938 Lah 503 (505): 177 Ind Cas 270 (DB), *Firm Tek Chand v. Ata Mohamad*.



acknowledgment into a bond.<sup>4</sup> This distinction is made clear also by the proviso to Art. 1 in Sch. I to this Act, which excludes from the scope of that article an acknowledgment which contains any promise to pay the debt or any stipulation to pay interest. An attested document which contains an acknowledgment as well as an express promise to pay may amount to a bond.<sup>5</sup> See also Note 7.

An agreement is a wider term. A bond may be said to be an agreement in so far as the executant thereof agrees to do something; but when it falls within the definition of a bond it is something more than an agreement.<sup>6</sup> An agreement does not become a bond merely because it is attested. The obligation to pay undertaken by the executant must be the *principal* if not the only obligation created by the deed.<sup>6a</sup> Thus, the instrument in the case noted below<sup>6b</sup> was attested and contained an obligation to pay money to another. But the primary object of the deed was to evidence a transaction of sale of goods and the obligation to pay money related to such sale. It was, therefore, held that the instrument did not amount to a bond but to an agreement only.

The form in which the instrument is written is immaterial. Thus, where an attested instrument was in the form of an agreement between two parties reciting that a certain sum of money was due as principal and interest from the first party to the second, and the first party covenanted to pay the amount in a particular manner stated therein, the deed was held to be a bond, even though it was called an agreement and also contained other stipulations in the nature of a mere agreement.<sup>7</sup>

In another case, an attested instrument purporting to be an agreement between two parties, recited the fact that one party had executed certain promissory notes in favour of the other party, that the debtor party would make the payment of the promissory notes in a certain way stated therein and that if the conditions in the deed

4. ('37) 24 AIR 1937 Lah 220 (222) : 170 I. C. 68 (DB), *Dewan Chand v. Punjab and Kashmir Bank*.

('34) 21 AIR 1934 Nag 261 (262) : 31 Nag L R 108 : 153 Ind Cas 952, *Chhaganlal v. Emperor*. (Mere signing of a balance in account books even if it is attested does not necessarily make such instrument a bond. Even if the obligation to pay is implied, it does not do so. Otherwise Sch. I of the Stamp Act would be useless.)

[See also ('19) 6 AIR 1919 Nag 141 (142) : 50 Ind Cas 781, *Sitaram v. Thakurdas*. (Unconditional acknowledgement does not imply promise to pay and cannot be validated as an agreement under Sch. I, Art. 1.)]

5. ('03) 1903 Pun Ro No. 35, page 111 (113) : 1903 Pun L R No. 101 (FB), *Daula v. Ganda* (Every instrument must be considered on its own merits. The instrument under consideration says *Baqi lene Ganda pason, Suhela pason*. *Lena* and *Dena* are complementary to one another and when *G* and *S* signed this instrument by which plaintiff was to take the balance from them, they must be held to have undertaken to pay the balance and to have therefore obliged themselves thereby to pay the money.)

('34) 21 AIR 1934 Nag 261 (262) : 31 Nag L R 108 : 153 Ind Cas 952, *Chhaganlal v. Emperor*. (Signing balance in Mahajan account books attested—Obligation to pay implied—

Instrument is not bond—But obligation to pay principal and interest was express—Such a document is a bond.)

('38) 25 AIR 1938 Lah 503 (505) : 177 Ind Cas 270 (DB), *Firm Tek Chand v. Ata Mohammad*: (Balance struck—Entry as 'Baki Raha' signed by debtor and attested by witnesses—Entry amounts to acknowledgment and no stamp duty required—Entry as 'baki dena' by debtor is agreement—If attested, it amounts to 'bond' and requires stamp duty.)

6. ('36) 23 AIR 1936 All 481 (483) : 58 All 1083 : 160 Ind Cas 870 (SB), *In re Board of Revenue, U. P.*

('31) 18 AIR 1931 All 392 (393) : 133 Ind Cas 157 (FB), *In re Mahant Raj Balamgir*. (If a document comes within the definition of a bond, the general Art. 5 relating to agreement not otherwise provided for would not be applicable.)

('97) 1897 Bom P J 382 (FB), *Adarji Dorabji v. Rajaram Jhurakhanlal*. (Per Candy, J.) Also see Art. 5, Note 6.

6a. ('36) 23 AIR 1936 All 481 (485) : 58 All 1083 : 160 Ind Cas 870 (SB), *In re Board of Revenue, U. P.*

('31) 18 AIR 1931 All 392 (393) : 133 Ind Cas 157 (FB), *In re Mahant Raj Balamgir*.

6b. ('31) 18 AIR 1931 All 392 (393) : 133 Ind Cas 157 (FB), *In re Mahant Raj Balamgir*.

7. ('39) 26 AIR 1939 All 205 (206) : ILR (1939) All 229 : 181 I. C. 67 (DB), *Maula Bux v. Munna Lal*.



were faithfully observed, the debtor party would get certain reduction in interest. It was contended that the deed was a bond. But it was held to be an agreement only inasmuch as it did not create any obligation to pay money in place of the old promissory notes, but kept them alive and simply provided for the manner in which they were to be repaid.<sup>8</sup> See also the undermentioned case.<sup>9</sup>

As regards agreements containing an obligation to deliver grain or other agricultural produce, see Note 11.

An agreement by A to advance money to B by way of loan does not create "an obligation to pay money" within this definition. Such an agreement is neither capable of specific performance nor does it create a debt, though the breach of it may give rise to a claim for damages. An instrument, therefore, evidencing an agreement to advance money by way of loan to another person is not a bond within the meaning of this definition.<sup>10</sup> A contrary view has, however, been taken by the Madras High Court in the case noted below<sup>11</sup> without stating any reasons for the opinion.

An agreement to pay a certain sum every year may be a "bond".<sup>12</sup>

An attested agreement to do or forbear from doing a certain act and to pay a certain sum of money on breach of the agreement has been held to be a "bond".<sup>13</sup> See also Notes 7 and 10.

**6. "Bond" and "promissory note."**—Under cl. (b), an attested instrument whereby a person obliges himself to pay money to another and which is not payable to order or bearer would be a "bond."

Such an instrument is also capable of falling within the definition of a promissory note under sub-s. (22). Under that definition also the instrument must contain an *undertaking* to pay money to another and there is no provision that the instrument must *not* be attested or that it must necessarily be payable to order or bearer.

But, the maxim being *specialia generalibus derogant* (things special take from things general), an instrument which satisfies the definition under cl. (b) must be held to be taken out of the more general definition in sub-s. (22). Hence, for the purposes of this Act such an instrument must be treated as a "bond" and not a "promissory note,"<sup>1</sup>

8. ('43) 30 AIR 1943 All 218 (219): 207 Ind Cas 252 (DB), *Radha Swami Sat Sang Sabha v. Raj Narain*.

S 2 (5)—NOTE 6

9. (1899) 1 Q B 250 (258): 68 L J Q B 222: 79 L T 514: 47 W R (Eng) 247, *National Telephone Co. Ltd. v. Commr. of Inland Revenue*. (Agreement in writing not under seal between a Telephone Company and one R by which R agreed to pay to the Company £12 per annum in advance for hire of a private wire between the points stated therein and the telephone apparatus—Agreement held chargeable as a 'bond, covenant or instrument of any kind whatsoever' within the meaning of Sch. I of the English Stamp Act of 1891 and not as an agreement.)

10. ('09) 33 Bom 426 (428): 2 Ind Cas 432 (DB), *Hitavardhak Cotton Mills v. Sorabji Dinsha*.

11. ('92) 15 Mad 193 (198) (FB), *Reference under Stamp Act*.

12. ('87) 1887 Bom P J 243 (DB), *Bai Lakhi v. Amaldas*.

13. ('20) 7 AIR 1920 Lah 481 (482), *Nand Lal v. Karam Chand*.

1. ('27) 14 AIR 1927 Nag 195 (195): 100 Ind Cas 794, *Rozario v. Hariballabh Onkarjee*.

('90) 13 Mad 147 (147) (FB), *Reference under Stamp Act*.

('05) 29 Bom 82 (84): 6 Bom L R 841 (FB), *Venku v. Sitaram*. (An instrument, called a *vayade chitti*, was as follows:—"I have this day taken from you in cash Rs. 48. I have received this amount, therefore I shall repay this money without taking any objection when you should demand." The document was stamped with one anna stamp, was signed by the executant and attested by two witnesses. *Held*, it was a bond.)

('17) 43 Ind Cas 55 (57) (DB)(Mad), *Kararam Rangiah v. Mala Chengamma Naidu*. (A document attested by two witnesses and stamped with an adhesive stamp of one anna, was as follows:—"I promise to pay you or your heirs on demand the sum of Rs. 40, the amount I borrowed from you this day, with interest at 1 per cent., per mensem." *Held*, that the document was a bond.)



though it is styled a 'promissory note'<sup>2</sup> or is engrossed on a *hundi paper*.<sup>3</sup> Thus it may be stated that an attested promissory note, not payable to order or bearer is a bond.<sup>4</sup>

An *unattested* bond, on the other hand, is a promissory note.<sup>5</sup> Similarly, an instrument which is payable to a person *or order* is a promissory note and not a bond, in spite of the fact that it is attested.<sup>6</sup> A *shahjog* hundi drawn on oneself is an instrument whereby a person obliges *himself* to pay money to another and which is not payable to order or bearer. Hence, an attested *shahjog* hundi will be a 'bond' under cl. (b).<sup>7</sup>

A promissory note can only be for a *certain* sum of money while a bond can be for an unascertained sum.<sup>7a</sup>

Money under a promissory note is payable to a 'certain' person, that is to say an instrument, to constitute a promissory note, must indicate, on the face of it, the person to whom the money is payable with certainty. Otherwise, the document will not be a promissory note. This requisite does not seem to be necessary in the case of a 'bond.' Thus, where an entry in an account book signed by the debtor contained the words 'this sum of money will be paid by me immediately,' it was held that though the words amounted to an unconditional promise to pay, the entry could not be a promissory note as the name of the payee was not mentioned therein. The document was held not to be a 'bond' as it was not attested, but an agreement only.<sup>8</sup> In another instance, an entry in the *khata* evidenced an unconditional agreement to pay a certain sum of money, the money was not expressed to be payable to order or bearer and the entry was attested; the entry was held to be a 'bond' and not a promissory note as the name of the payee was not apparent on the face of the document.<sup>9</sup> Where a sum was made payable at a future date to 'the members for the time being' of a firm named in the document, it was held that the document was not a promissory note as the payee was not 'certain' on the date of the document as required by S. 4 of the Negotiable Instruments Act.<sup>10</sup> See also Notes on S. 2 (22).

2. ('84) 8 Bom 297 (298): 8 Ind Jur 625 (FB), *Balkrishna v. Govind*.

('30) 17 AIR 1930 Cal 630 (631): 58 Cal 507: 129 Ind Cas 407 (FB), *Barisal Findan v. Sital Chunder*.

('22) 9 AIR 1922 Low Bur 27 (27): 11 Low Bur Rul 316: 67 Ind Cas 640, *Collector of Rangoon v. Abdul Rahman*.

3. ('85) 8 Mad 87 (89) (FB), *Reference under Stamp Act, S. 46*.

('32) 19 AIR 1932 Lah 22 (22): 135 Ind Cas 191 (DB), *Mohindar Singh v. Nagina Mal*.

4. ('07) 9 Bom LR 1034 (1039, 1041), *R. D. Sethna v. Mirza Mahomed Shirazi*.

('33) Mad S M p. 6 (6). (Citing, B. P. 1867, 26th June 1883.)

('33) Mad S M p. 86 (86). (Citing, B. P. 4339, 18th December 1884.)

5. ('95) 17 All 211 (212): 1895 All WN 61 (FB), *Reference under Stamp Act, S. 49*.

('02) 1902 Pun Re No. 14, p. 51 (52): 1902 Pun LR No. 3 (FB), *Gurditta Mal v. Dhanna Shah*.

6. ('33) 20 AIR 1933 Nag 391 (391): 147 Ind Cas 981, *Govinda v. Haribhau*. (Document purporting to be a promissory note on a printed form of note—Money payable to

order also attested by two witnesses—*Held not a bond but a promissory note though attested*.)

('85) 8 Mad 87 (89) (FB), *Reference under S. 46 of the Stamp Act*.

('33) Mad S M p. 13. (Citing B. P. 4339, 18th December 1884.)

7. ('16) 3 AIR 1916 Cal 888 (890): 33 Ind Cas 250 (DB), *Keshari Chand v. Asharam Mahato*.

('16) 3 AIR 1916 Cal 838 (840): 33 Ind Cas 247, *Assaram v. Kesri Chand*.

Also see S. 2 (2) & (3), Note 9.

7a. ('97) 1897 Bom PJ 382 (FB), *Adarji Dorabji v. Rajaram*. (Promise to pay a certain percentage.)

8. ('34) 21 AIR 1934 Mad 25 (26): 146 Ind Cas 943, *Kadir Moithin v. Panduranga Naidu*. [See also ('09) 5 Low Bur Rul 102 (106, 107): 4 Ind Cas 293 (FB), *In re Yeo Eng Pwa v. R. M. A. R. R. M. Chetty Firm*.]

9. ('01) 3 Bom LR 699 (702) (FB), *Lala v. Bhaga*.

Also see S. 2 (22), Note 28.

10. ('09) 5 Low Bur Rul 102 (106, 107): 4 Ind Cas 293 (FB), *In re Yeo Eng Pwa v. R. M. A. R. R. M. Chetty Firm*.

Also see S. 2 (22) Note 28.



note did not say in terms that the amount of it was payable to the order of the payee but it was nonetheless so payable under Explanation 1 to S. 13 of the Negotiable Instruments Act by which in the absence of words of any prohibition, a promissory note payable to the payee was also payable to his order and the question was whether it was a bond within the terms of S. 2 (5) (b) of the Indian Stamp Act and the learned Judges have answered it in the affirmative. A similar view was taken by the Judicial Commissioner of Nagpur in *D. Rozario v. Hariballabh Onkarjee Trivedi*<sup>19</sup> but this case is of no authority as the difficulty has not been noticed with reference to the explanation referred to above. The point therefore is really one of first impression and we are not sure whether as much cannot be said for the opposite view as for the one which found acceptance by the learned Judges. It may at once be conceded that a promissory note does not cease to be one or become a bond merely because it is attested by witnesses. (See *Reference under Stamp Act, Section 46.*)<sup>20</sup> To fall within the definition of a bond in the Indian Stamp Act, the instrument needs a further requisite, i.e., that it should not be payable to order or bearer. In the absence of anything in the language of S. 2 (5) (b) of the Indian Stamp Act restricting it to the apparent tenor of the instrument, there does not seem to be anything to so understand it and hold that though an instrument is payable to order under the law as under S. 13, Explanation 1 of the Negotiable Instruments Act, it is still one not payable to order under S. 2 (5) (b) of the Indian Stamp Act and is a bond within the definition of the latter Act. The decision of the learned Judges would have been quite clear if the Indian Stamp Act had excluded from its definition of a bond only those which contain the words "order or bearer" on their face. The decision of the learned Judges has perhaps this advantage, that instruments of this nature will be admissible on the payment of a penalty under S. 35 of the Stamp Act which will not be the case if they are treated only as promissory notes within the meaning of the Act. If a document falls both within the definition of a promissory note and a bond in the Indian Stamp Act, it will have to bear the higher stamp duty under S. 6 of the Act as a bond and the prohibition regarding its admissibility in evidence as a promissory note may thus be removed."

**7. Bond and acknowledgment of debt.**—It is a general practice in India for the creditors to get the balances in their account books signed by the debtors on one anna stamp. In many cases such entries are also attested. When suits are brought on the basis of such entries, a question usually arises as to the real nature of the entry, that is to say, whether the entry is merely an acknowledgment or amounts to a bond, a promissory note or an agreement and as such whether it is properly stamped so as to be admissible in evidence. The nature of the entry is to be determined in each case by scrutinizing and interpreting the entry itself. It is a well-known rule of construction of documents that each document has to be considered on its own wording and that it is not possible to lay down any hard and fast rule which might govern all cases.<sup>1</sup> Some general principles may however be stated to indicate the distinction between the above forms of documents as follows :

(1) A bond is an instrument which *creates* an obligation to pay. In the case of an acknowledgment, however, there is no creation of any liability but merely a *recognition of a pre-existing liability*.

19. ('27) 14 AIR 1927 Nag 195 : 100 Ind Cas 794.

20. ('85) 8 Mad 87 (FB).

S 2 (5)—NOTE 7

1. ('38) 25 AIR 1938 Lah 503 (504) : 177 Ind

Cas 270(DB), *Firm Tek Chand v. Ata Mohammad*. (Overruled by AIR 1942 Lah 50 : ILR (1942) Lah 282 (FB) on another point.)



(2) As seen in Note 5 an obligation to pay money to another must be *express* in a bond, while in acknowledgments there is no such *express* obligation though it is *implied* by law.<sup>2</sup> When an entry is attested, the fact that it also contains an express obligation to pay will convert it into a bond.<sup>3</sup>

What constitutes an express obligation to pay is a question of fact depending upon the wording of each entry. Each entry has to be weighed on its merits and with reference to the circumstances of the case and a decision arrived at whether the words in question import or do not import a promise to pay.<sup>3a</sup> Thus, where an entry signed by the debtors and attested by witnesses was to this effect: "Rupees 948 *baqui lene, Ganda pason, Sahela pason boaj saikra da* Re. 1," it was held the words "*lena*" and "*dena*" were complementary to each other and that by these words in the entry the executants had obliged themselves to pay money to the creditor and hence the entry was a bond.<sup>4</sup> In the undermentioned case<sup>5</sup> the *ruju*, i.e., the entry in account books was signed by the debtor on one anna stamp. The creditor also took a separate *chitti* from the debtor which was attested and contained a covenant to pay interest. The *ruju* contained the words in Marathi "*Rupaye ghetale te dene ase.*" It was held that these words constituted an express obligation to pay on the part of the debtor and as the *ruju* and *chitti* formed one instrument, they constituted a bond.

If an entry signed by the debtor and attested by a witness does not contain any words which may amount to an express obligation to pay on the part of the debtor the entry amounts only to an acknowledgment and the fact that it is attested is immaterial.<sup>6</sup> The stamp duty is not based on the legal obligation flowing

2. ('85) 1885 Pun Re (Rev) No. 4, p. 7 (7), *In re Devi Ditta Mal*.

('33) 20 AIR 1933 Lah 271 (273): 142 Ind Cas 535, *Jagannath v. Mt. Chauhi*. (There is a clear distinction between an "acknowledgment" and a "bond" as defined in the Stamp Act, and if a 'promise to pay' is imported into an "acknowledgment" the distinction between the two will practically disappear when the acknowledgment is attested. A promise to pay cannot be deemed to be included in an acknowledgment for the purpose of the Stamp Act.)

3. ('20) 7 AIR 1920 Lah 175 (175): 56 Ind Cas 117, *Hari Singh v. Fazal*. (Book entry containing promise to pay at a certain rate of interest attested by two witnesses—Entry is a bond as defined by the Act.)

('37) 24 AIR 1937 Lah 220 (222): 170 Ind Cas 68 (DB), *Dewan Chand v. Punjab and Kashmir Bank*.

('34) 21 AIR 1934 Nag 261 (262): 31 Nag L R 108:153 Ind Cas 952, *Chhaganlal v. Emperor*.

[See also ('29) 16 AIR 1929 All 980 (981): 52 All 169: 121 Ind Cas 108 (DB), *Govind Singh v. Bejay Bahadur*. (A receipt bearing one anna stamp can serve as proof of an acknowledgment of a debt and can be a foundation for an action for recovery of the debt, though, as regards the promise to pay it contains, it becomes a bond and is inadmissible for want of proper stamp duty.)]

3a. ('42) 29 AIR 1942 Lah 50 (55): I L R (1942) Lah 282:199 Ind Cas 161 (FB), *Firm Shiv Ram Punnun Ram v. Faiz*.

4. ('03) 1903 Pun Re No. 35, p. 111 (113): 1903 Pun L R No. 101 (FB), *Daula v. Ganda*.

5. ('34) 21 AIR 1934 Nag 261 (262): 31 Nag L R 108:153 Ind Cas 952, *Chhaganlal v. Emperor*.

6. ('37) 24 AIR 1937 Lah 220 (222): 170 Ind Cas 68 (DB), *Dewan Chand v. Punjab and Kashmir Bank*. (Acknowledgment attested by two witnesses and containing implied promise to pay interest—Such acknowledgment is not bound as there is no express obligation to pay amount due—Implied obligation cannot convert acknowledgment into bond.)

('85) 1885 Pun Re (Rev) No. 4, p. 7 (7), *Champa Ram v. Crown*.

('33) 20 AIR 1933 Lah 271 (273): 142 Ind Cas 535, *Jagannath v. Mt. Chauhi*.

(1884) 8 Bom 194 (195) (FB), *Chowksi Himuttal v. Chowksi Achrutal*. (Khata or account stated signed by the debtor and bearing one anna stamp—No promise to pay evidenced in the writing—*Held*, Khata amounted to a mere acknowledgment and as such sufficiently stamped—It was neither an agreement nor a new contract within S. 25 (3) of Contract Act.)

('90) 14 Bom 511 (512) (DB), *Dulabh Vanmali v. Rehman Jamal*. (Khata bearing name of a debtor acknowledging the receipt of the amount advanced and signature of the writer as writer only—*Held* it was an acknowledgment only and not a bond.)

Also see Art. 1 Note 10.



from a document but on the nature of the document itself. In other words, what is taxed is not the transaction but the document and therefore whatever implied promise there may be involved in an unconditional acknowledgment, it can never be a bond, unless the obligation is contained in the document in express terms.<sup>6a</sup> In *Firm Shiv Ram Punnum Ram v. Faiz*<sup>7</sup>, Bhide, J., of the Lahore High Court, after discussing the case-law on the matter, has summarised it as follows :

“The phraseology employed usually is *baqi dene*, *baqi lene*, or *baqi rahe*, but all these expressions appear to mean really the same thing, namely, that such and such balance is payable.... I am, therefore, of opinion that when this phraseology is employed and there are no other words expressing any promise to pay the entries should be taken to amount to mere acknowledgment and would be chargeable as such with a duty of one anna only if the acknowledgment is for a sum of more than Rs. 20. Of course if the acknowledgment includes any stipulation as to interest or to deliver any goods or other property the entry will be taken out of the scope of the Article, by virtue of its proviso. If the phraseology of the entry itself contains a distinct promise to pay, it will be called an agreement. If the entry is also attested it will be classed as a bond.”

(3) *Acknowledgments with stipulation for interest*.—Before the amendment of Art. 1, Sch. I, by the insertion of the proviso in 1899, it was held that the mere fact that an acknowledgment contains a memorandum as to the rate of interest to be paid on the loan was not sufficient to convert what was otherwise a mere acknowledgment into an instrument of another description.<sup>8</sup> The amendment above referred to, however, excludes the documents containing an acknowledgment of debt along with a stipulation to pay interest from the category of acknowledgments of debts. Such documents would, therefore, amount to agreements and would be liable to stamp duty under Art. 5 (c) of Sch. I.<sup>9</sup>

(4) Where the document purporting to be an acknowledgment is not attested but contains a promise to pay, it is not a bond, but may amount to a promissory note.<sup>10</sup>

6a. ('42) 29 AIR 1942 Lah 50 (55): I L R (1942) Lah 282: 199 Ind Cas 161 (FB), *Firm Shiv Ram Punnum Ram v. Faiz*. (A balance couched in the words “*baqi rahe lene lekha karke*” written by the creditor and signed by the debtor and attested by a witness amounts to an acknowledgment under Art. 1 of Sch. I and is not an agreement under Art. 5 or a bond under Art. 15 of the same schedule.)

7. ('42) 29 AIR 1942 Lah 50 (56): ILR (1942) Lah 282: 199 Ind Cas 161 (FB). (Overruling AIR 1932 Lah 470, AIR 1934 Lah 835: 16 Lah 258, AIR 1938 Lah 503, AIR 1938 Lah 511 and AIR 1939 Lah 486.)

8. ('95) 22 Cal 757 (759) (DB), *Hira Lal Sircar v. Queen-Empress*.

9. ('34) 21 AIR 1934 Nag 261 (262): 31 Nag L R 108: 153 Ind Cas 952, *Chhaganlal v. Emperor*.

('19) 6 AIR 1919 All 196 (199): 41 All 169: 52 Ind Cas 974, *Mahadeo Kori v. Sheoraj Ram Teli*. (A document, described as a sarkhat, which, in addition to acknowledging a debt, contains a note of the rate of interest to be payable hereafter on the debt thus acknowledged, is a document embodying an agreement within Art. 5 of Sch. I.)

[See ('31) 18 AIR 1931 All 302 (303): 131 Ind Cas 135 (DB), *Ratan Singh v. Pirbhu*

*Dayal*. (An acknowledgment of debt coupled with an agreement to pay interest—No unconditional undertaking to pay certain sum of money—Document is not a promissory note but merely an acknowledgment coupled with an agreement to pay interest.)]

[See also ('88) 15 Cal 150 (152) (DB), *Murari Mohun Roy v. Khetter Nath Mullick*. (An unattested document ran as follows:—“This document, hand note, is executed by me for the purpose of purchasing a *ghor*. I take from you Rs. 7. I will pay interest on the sum at half anna per rupee per mensem. Having received the Rs. 7 in cash this hand note is executed”—Held this was not a bond or a promissory note but merely an agreement to pay chargeable under Art. 5 of Sch. I.)]

Also see Art. I Note 9 and Art. 5 Note 14.

[But see ('04) 27 All 84 (86): 1 All L Jour 483 (DB), *Udit Upadhyay v. Bhawani Din*. (Document stating amount borrowed, date for repayment and rate of interest—No promise to pay—Document held mere memorandum amounting to a simple acknowledgment and not a bond or a promissory note.)]

10. ('34) 21 AIR 1934 Mad 25 (26): 146 Ind Cas 943, *Kadir Moithin Pulavar v. Panduranga Naidu*. (Entry in Account book—



A document which purports to be a promissory note cannot, however, be used as an acknowledgment. If such a document is inadmissible in evidence for want of sufficient stamp duty as a promissory note, it is inadmissible in evidence also as a written acknowledgment.<sup>11</sup>

An entry of a loan in the creditor's account books with a promise to pay and attested does not amount to a bond if it is not signed by the debtor.<sup>12</sup>

See also Note 5.

**8. Promise to Pay time-barred debt.**—In *David Sutherland Clark v. Rosa Grimshaw*<sup>1</sup> it was observed by the Lahore High Court as follows :

"The real ground, however, upon which we repel the objection.... (as to stamp) is that a written promise to pay a barred debt is not required by any provisions under the Indian Stamp Act to be stamped. We cannot hold that a promise to pay a barred debt is a 'bond' within the meaning of the Indian Stamp Act."

It is submitted that the above is stated somewhat too broadly. There does not seem to be any reason why a time-barred debt cannot be the subject-matter of a 'bond' under clause (b) of this definition.

If the instrument is *not attested*, however, it will not be a 'bond.' It may be an 'agreement'<sup>2</sup> or a 'promissory note.' See also Note 4 on S. 2 (22).

In any case, it does not seem to be correct to say that in no case will a stamp be necessary for a writing containing a promise to pay a time-barred debt which is enforceable as a contract under S. 25 (3), Contract Act. See also Art. 5, Note 16.

**9. Indemnity Note.**—An instrument purporting to be an indemnity note passed from a consignee and his surety to a railway company, in respect of goods delivered to the former, as he could not produce a railway receipt therefor, contained an undertaking by the consignee to hold the railway company, its agents and servants harmless and indemnified in respect of all claims to the goods delivered to him. The question was whether the instrument was liable to a stamp as a bond, or an indemnity bond or as a simple agreement. As the instrument was attested, was not payable to bearer or order and contained an undertaking by which the executant might be required to pay money to another, it was argued that the instrument clearly came under clause (b) of this definition and was a bond. It was held that the instrument was not a bond as it fell short of the requirement that the executant should '*oblige himself to pay money to another.*' What the executant contracted to do was 'to hold the railway, its agents and servants harmless and indemnified in respect of all claims for the goods delivered to him' and that could be done in various ways besides the

'This sum of rupees will be paid by me immediately'—*Held* not an acknowledgment as it contained a promise to pay debt (*vide* Sch. I, Art. 1) but as it was not attested it was also not a 'bond.' As it did not mention the name of the payee it was not a promote but only an agreement.—Case law discussed.) ('82) 8 Cal 645 (648): 7 Cal L R 88 (DB), *Manik Chand v. Joonona Doss*. (Two documents bearing one anna stamps—One stating 'Rs. 230 to be due to you payable on 16th July' and the other reciting 'the whole amount will be paid in full on the 3rd August'—*Held*, documents amounted to promissory notes payable otherwise than on demand.) Also see S. 2 (22) Note 10 and Art. 1 Note 8.

11. ('33) 20 AIR 1933 Nag 391 (391): 147

Ind Cas 981, *Govinda v. Haribhau*.

12. ('70) 2 N W P H C R 453 (454), *Queen v. Buldeo*.

Also see Note 10.

#### S 2 (5)—NOTE 8

1. ('23) 10 AIR 1923 Lah 481 (483): 73 Ind Cas 652 (DB).

2. ('23) 10 AIR 1923 Cal 659 (661): 79 Ind Cas 77 (DB), *Prasanna Kumar v. Panaulla*. ('81) 3 All 781 (786): 1881 All W N 68 (DB), *Billings v. Uncovenanted Service Bank*. (Promise to pay a barred debt embodied in a petition signed by the debtor—*Held* not a bond, but an agreement within Art. 11 of Sch. II of Act XVIII of 1869.)

Also see S. 2 (22) Note 4 and Art. 5 Note 16.



payment of money. The payment of money not being necessarily the only way to perform the contract and other modes being open to the executant the instrument was not a bond, nor was it an indemnity bond within Art. 28 of Sch. I of Act. 1 of 1879 (now Art. 34 of Sch. 1) but only an agreement coming under Art. 5 (c)<sup>1</sup>.

**10. Bond—Illustrative cases.**—Entries of loans in the account books of a creditor containing a promise to pay and attested by one or more witnesses do not amount to a bond, if they are not signed by the borrowers.<sup>1</sup>

An instrument which is a bond is not the less a bond because it does not come into operation unless and until a certain event happens.<sup>2</sup>

A signed and attested document was in the following terms : "You have caused me to open a shop to which you have given as a loan Rs. 350 ; you have entrusted me with the shop after having settled that you shall have one share and I shall have one and a half share in the profits of the firm, after deducting the amount lent by you with interest at 10 annas per cent. per mensem and Rs. 9 as annual rent of your shop...." The document was held to be a bond for Rs. 350 plus possible profits and as such liable to pay stamp of at least Rs. 2-8-0.<sup>3</sup>

Where a proprietor of a debtor firm executed a deed reciting that the firm has sold certain property to its creditor firms for a certain sum in liquidation of part of its debts and promised to repay the balance within a period of four years, and the deed was signed both by the debtor firm as vendor and the creditor firms as vendees, the creditor firms could not be described as having executed 'a bond' to pay the balance, because a person cannot by his own instrument bind another person to pay any money to him. It was the debtor firm who had undertaken to repay the balance and had thus executed a bond in favour of the creditor firm. Even assuming that the deed implied a promise, on the part of the creditor firms, of forbearance to sue until the expiry of four years, it would be an agreement and not a bond on the part of the creditor firms. In this view the instrument was held to embody three matters, namely, a conveyance, a bond and an agreement.<sup>4</sup>

One V executed an instrument termed 'agreement of maintenance' to his deceased brother's widow stipulating to pay her annually a quantity of paddy and Rs. 7-8-0 for her maintenance. The document was executed on a stamp of eight annas. The Sub-Registrar considered it to be insufficiently stamped and forwarded it to the Sub-Collector who observed that the document was more properly a bond than an agreement as there was no reciprocity but simply a written promise whereby a person obliged himself to pay money and grain to another. The instrument was attested and not payable to bearer or order. The Board on these facts held the document to be a bond.<sup>5</sup>

See also the following instances.<sup>6</sup>

S 2 (5)—NOTE 9

1. ('81) 5 Bom 478 (481) (FB), *Reference from the Chief Commissioner of Central Provinces*. Also see Art. 34 Note 3.

S 2 (5)—NOTE 10

1. ('70) 2 N W P H C R 453 (454), *Queen v. Buldeo*.  
Also see Note 7.
2. ('96) 20 Bom 791 (794) (DB), *Lakshmandas Raghunathdas v. Rambhau Mansaram*. (Bond not operative till the *hundis* had been dishonoured.)
3. ('83) 1883 Bom P J 14 (DB), *Dhanji v. Vohra Bhaiji*. (Case decided under Act I of 1879.)

Also see Art. 15 Note 5.

4. ('36) 23 AIR 1936 Lah 449 (451, 452) : 17 Lah 223 : 162 Ind Cas 774 (SB), *Shams Din v. Collector, Amritsar*.
5. ('33) Mad S M p. 6 (6). (Citing, B. P. 186, 4th February 1881.)
6. ('33) Mad S M p. 86 (86). (Citing B. P. 1981 R Mis., 19th October 1905—A document written on a 15-rupees stamped paper in 1905 and termed as a single debt bond, ran as follows :—"As you are my daughter and I have great affection towards you, I propose to make a gift to you of Rs. 3,000 on account of saffron and betel-leaf expenses. As I have now no money in hand, I will pay the amount



**11. Undertaking to deliver grain or other agricultural produce—Clause (c).—** Under cl. (c) an attested instrument whereby a person obliges himself to deliver grain or other agricultural produce to another is a 'bond.' Thus, an attested instrument containing a promise to repay in kind a loan of grain or agricultural produce will be a 'bond.'<sup>1</sup>

The Act of 1869 did not include such "grain bonds" in the definition of 'bond.' Hence, such instruments were only held to be "agreements."<sup>2</sup>

Timber is not an "agricultural produce" within the meaning of cl. (c).<sup>3</sup>

An *unattested* instrument containing an undertaking to deliver grain or other agricultural produce will not be a 'bond' under this clause.<sup>4</sup>

There is a conflict of decisions whether an attested instrument containing an agreement for delivery of grain or other agricultural produce in pursuance of an agreement for the *sale* of such article will be a 'bond.' The general view is that such an instrument will be a 'bond' and stampable as such.<sup>5</sup>

on 1st May 1910 and, in the meanwhile, I agree to pay at the end of every year interest thereon at 10 annas per cent per mensem." On a question as to whether the document should not be treated both as a "deed of gift" and as a "bond" liable to a stamp duty of Rs. 30 plus Rs. 15 under Articles 33 and 15 the Board held that the document was a bond chargeable with a stamp-duty of Rs. 15 only under Article 15.)

('33) Mad S M p. 84. (Citing, B. P. 2773, 22nd December 1886—A document executed on a stamp of 8 annas ran to the following effect:—"I have received Rs. 50 from you as a loan on condition of my first son working in your gardens. I have also received Rs. 30 as debt employing my two other sons in your service. I have thus borrowed Rs. 80 from you mortgaging my three sons, and they should be relieved whenever the amount is repaid." Held, that the document should be considered as a bond, and that it cannot be recognized as a mortgage-deed.)

('33) Mad S M p. 83 (83). (Citing, B. P. 3287, 15th December 1881—A executed a document to B obliging himself to pay on demand £4,000 advanced to him as a loan with interest and exchange. It is signed by witnesses and further contains an agreement on the part of A to the effect that he will hold certain immovable property of his, available for mortgage and execute the requisite deeds of mortgage when required by B, whom he further appoints his attorney for preparing, executing and registering the deeds. Held, that the document is a bond and liable to stamp duty as such, but that it is not liable to further duty on account of the agreement and Power-of-Attorney conveyed by the terms of the document.)

#### S 2 (5)—NOTE 11

1. ('83) 7 Bom 137 (139) (DB), *Magandas Khemchand v. Ramchandra Hiraji*.

('25) 12 AIR 1925 Lah 415 (415) : 6 Lah 276 : 86 Ind Cas 844 (DB), *Wadhwa Mal v. Karim Baksh*.

[See also ('05) 7 Bom L R 929 (931) (FB), *Ramchandra v. Dhondoo Raghu*. (An agreement in a lease to pay one khandy and five maunds of paddy on account of the balance for the previous year amounts to a bond and must be stamped as such.)]

2. ('79) 4 Bom 19 (20) : 4 Ind Jur 413 (FB), *Chimnaji v. Ranu*.

[See also ('69) 6 Bom HCR (AC) 107 (109) (DB), *Lachiram Jayasangji v. Ramji Shivaji*. (Instrument in the form of promissory note for grain should be stamped as an agreement under Art. 1 of Sch. A of Act X of 1862.) ('82) 8 Cal 284 (286) : 10 Cal L R 219 (DB), *Gisborne and Co. v. Subal Bowri*.]

3. ('85) 8 Mad 15 (17) (FB), *Reference under Stamp Act, Section 46*.

4. ('24) 11 AIR 1924 Oudh 106 (107) : 26 Oudh Cas 383 : 80 I. C. 459, *Abhayraj Kunwar v. Data Din*.

Also see Note 6 and S. 2 (22), Note 26.

5.\*('06) 8 Bom L R 234 (236) (SB), *In re Ralli Bros*.

('84) 1884 Bom P J 257, *Rupchand v. Barku*.

('87) 9 All 585 (589) : 1887 All W N 190 (FB), *In re, Gajraj Singh*.

('41) 28 AIR 1941 All 243 (247, 257, 258, 265) : ILR (1941) All 471 : 195 Ind Cas 791 (FB), *L. H. Sugar Factory, Pilibhit v. Moti*. (Majority view—Bajpai and Dar JJ. contra.)

('27) 14 AIR 1927 Nag 72 (73, 74) : 98 Ind Cas 631, *Collector of Nimar v. Lakhmichandsa*. (To bring an agreement under the exemption from payment of stamp duty under the C. P. Stamp Law Rulings Circular No. 7, it must not only be an agreement for sale of goods or merchandise including grain or other agricultural produce, but it must be unattested. In this case, however, it was held that the document was not an agreement for sale of goods.)



But in the cases noted below<sup>6</sup> it was held that such an instrument was not a 'bond,' the reason given being that the preponderant character of the instrument is the sale and not the delivery of the article, which is only incidental to the sale. In this view, the instrument would be exempt from stamp duty under Art. 5, Exemption (a).

The true view seems to be that though the instrument is a bond, it is exempt from duty under Exemption (a) under Art. 5<sup>6a</sup>. The reason is that the exemption is general and is not confined to agreements that would have otherwise been chargeable under Art. 5.

An agreement to deliver goods in exchange for other goods is not one for sale. Such an agreement if it is in writing and attested and relates to agricultural produce will, therefore, clearly be a 'bond.'<sup>7</sup>

('33) Mad S M p. 70. (Citing, B. P. 2282, 7th August 1885—A executed a document to B, agreeing to deliver to B, 22 bushels of coffee at 14 annas per bushel less than the market price and acknowledging receipt of Rs. 72 as an advance. A further agreed to pay a penalty of Rs. 1-12-0 per bushel for every bushel short-delivered. At the foot of the document, C entered a note that, if A does not fulfil the above agreement, he (C) will be responsible—Held, that the principal instrument is a bond and should be executed on a stamp paper of one rupee, and that the footnote is not a separate instrument.)

Also see Art. 5, Note 17.

6. ('36) 23 AIR 1936 All 481 (485): 58 All 1083: 163 Ind Cas 614 (SB), *In re Board of Revenue*. (The definition in S. 2 (5) (c) clearly contemplates cases in which the agreement is merely to deliver grain or other agricultural produce which is the principal if not the sole obligation incurred under the agreement. Where such delivery is incidental or merely ancillary to the obligation to sell grain, etc., such agreement is not a bond. This decision must be deemed as overruled by AIR 1941 All 243: ILR (1941) All 471 (FB).)

('31) 18 AIR 1931 All 392 (393): 133 Ind Cas 157 (FB), *In re Mahant Raj Balamgir*. (Primary object of the deed sale of goods—obligation to pay relating to that agreement—Agreement, though attested, held not a bond—Decision must be deemed as overruled by AIR 1941 All 243: ILR (1941) All 471 (FB).)

('16) 3 AIR 1916 Low Bur 100 (101): 8 Low Bur Rul 382: 33 Ind Cas 920 (DB), *Collector of Rangoon v. Maung Aung Ba*. (An agreement to deliver agricultural produce for consideration and to compensate the covenantor in default does not fall within the definition of 'bond' as given in S. 2 (5) (c) so as to be chargeable *ad valorem* under Art. 15 of Sch. 1, even if it is attested by two witnesses. Such an instrument is an agreement under Art. 5 (1) (c) and falls under Exemption (a) of that Article.)

('33) Mad S M p. 76. (Citing, B. P. 1411, Mis., 7th November 1911.—By a document,

attested by witnesses, A bound himself to supply 2,000 bags of good paddy within a specified period to B at Rs. 4-8-0 a bag to be delivered on B's boats at a wharf for purposes of B's trade. A received an advance of 8 annas per bag amounting to Rs. 1,000 in all towards the performance of the contract and the balance of Rs. 4 a bag was to be paid to A on the days on which the bags were delivered. The Board held that the document was not a bond, but that it was an agreement for the sale of goods falling under Exemption (a) to Article 5.)

[See ('69) 5 Bom H C R 151 (152) (DB), *Samasuddin Sultan v. Ramji Bhika*. (An agreement to supply cotton in consideration of a sum of money received should be stamped under Art. 4, corresponding to Art. 5 and not under Art. 15, Sch. A, Act X of 1862.)]

[See also ('37) 12 Luck 131 (133): 161 Ind Cas 420 (DB), *Sundar Lal v. Thakur Gandharp Singh*. (The terms of a document were that the executant agreed to supply the person in whose favour the document was executed certain maunds of sugar-cane juice at a certain rate. The document provided for the manner in which the price was to be paid. It also contained several provisions as regards the quality of the juice to be supplied and also a condition for payment of damages at a certain rate per maund in case of breach of agreement—Held, that the document in question could not be treated as a bond and must be treated as an agreement.)]

6a. (1886) 1886 Bom P J 83 (DB), *Daryaji v. Mahetap Khan*. (An instrument purporting to be a receipt of payment in advance in consideration of goods agreed to be delivered is a "bond" but inasmuch as it is an agreement "for or relating to the sale of goods," it is exempt from stamp duty. NOTE—Under Act of 1879, the exemption was given not under Art. 5, but in a separate Schedule, (Sch. 2). But it is conceived the same will be the position under the present Act also.)

7. ('27) 14 AIR 1927 Nag 72 (74): 98 Ind Cas 631, *Collector of Nimar v. Lakhmichandsa*.



**12. Covenants in deeds of transfer.**—Covenants in sale-deeds, mortgage-deeds, lease-deeds and other deeds of transfer may involve an obligation to pay money or deliver grain or other agricultural produce as for instance, a covenant for rent in a lease-deed. Such covenants are not 'bonds' as the obligation which they express is merely *incidental* to the transfer of property effected. In such cases, the deed is of only one character and hence, there is no question of applying S. 6. *A fortiori* there is no liability to separate duty under S. 5 in such cases.

For instance, where a deed of sale for a single consideration contains words which merely express the usual covenant of title contained in every properly drawn English conveyance, they cannot be construed as constituting an indemnity bond and liable as such to additional stamp duty.<sup>1</sup> Similarly, a stipulation in a deed of mortgage whereby the mortgagor binds himself to repay to the mortgagee any costs which he may incur in suits brought against him by the mortgagor's co-sharers and also any debts charged upon the property which the mortgagee may pay, is not an independent stipulation, unconnected with the mortgage transaction. In fact it merely states expressly what under the ordinary law of mortgage, the mortgagor is bound to do, namely, to indemnify the mortgagee against the expenses incurred in protecting the title, so long as the equity of redemption remains with the mortgagor. The stipulation, therefore, need not be separately stamped as an indemnity bond.<sup>2</sup> So also a stipulation in a lease-deed which relates to the subject-matter of the lease need not be stamped separately.<sup>3</sup>

In some cases, the covenant may be independent of the character of the instrument as a deed of sale, mortgage, lease, etc. In such cases, the covenant may be a 'bond.' See Note 6.

**13. Instruments constituting both bond and some other document.**—An instrument may constitute *both* a "bond" and some other instrument and yet may not comprise two "distinct matters." Thus, an instrument may at the same time be a 'bond' and a 'mortgage.' See the undermentioned cases for instances.<sup>1</sup> In

#### S. 2 (5)—NOTE 12

1. ('76-78) 1 Mad 133 (133): 1 Ind Jur 128 (FB), *Case No. 1 of 1876*.

Also see S. 2 (10) Note 18, S. 5 Note 5 and Art. 34 Note 3.

2. ('85) 9 Bom 435 (437) (FB), *Damodar Gangadar v. Vamanrao Lakshman*.

Also see S. 2 (17) Note 23, S. 5 Note 5 and Art. 34 Note 3.

3. (1902) 1 KB 441 (451): 71 L J K B 92: 85 L T 663: 50 W R (Eng) 280: 18 T L R 105, *British Electric Traction Co. v. Commissioners of Inland Revenue*.

Also see S. 5 Note 7 and Art. 35 Note 4a.

#### S. 2 (5)—NOTE 13

1. ('36) 23 AIR 1936 All 481 (482): 58 All 1083: 163 Ind Cas 614 (SB), *In re Board of Revenue*. (Mortgage of crops and 'bond' to deliver agricultural produce.)

'87) 9 All 585 (589): 1887 All W N 190 (FB), *In re Gajraj Singh*. (Agreement to supply twenty-one maunds of Rab in consideration of Rs. 25, received in advance as earnest-money and certain profit—Stipulation to pay money at once on failure to supply—

Collateral security by hypothecating the produce of the field—Instrument is both a bond and mortgage—Highest duty to be paid under S. 7 of Act I of 1879.)

('41) 28 AIR 1941 All 243 (245, 247, 252): ILR (1941) All 471: 195 L. C. 791 (FB), *L. H. Sugar Factory, Pilibhit v. Moti*. (Deed—Agriculturist executant hypothecating sugarcane field to factory, promising to sell sugarcane crop and taking Rs. 35 as advance—Executant to take further sums from creditor aggregate whereof would come to Rs. 100—Price of sugarcane to be allowed set-off against *mutalba* aforesaid—Executant undertaking to pay up *mutalba* if any found due by him—Deed bearing two annas stamp, signed by executant, attested by witnesses but not registered—Document held bond within meaning of S. 2 (5) (Per Full Bench; Bajpai and Dar JJ., contra)—Instrument was mortgage and agreement to sell (Per Full Bench)—Amount secured under document held was Rs. 100 (Per Full Bench; Verma and Mulla JJ., dissenting)—Document held sufficiently stamped (Per Full Bench; Verma and Mulla JJ., contra.)

Also see S. 2 (17) Note 22, S. 6 Note 7 and Art. 15 Note 6.



such cases, under S. 6, duty is payable at the highest amount that would be chargeable under Sch. 1 in regard to the instrument.

In such cases, the duty to pay money or deliver agricultural produce is not an *incident* of the main transaction (see Note 12), but at the same time is not a *distinct* matter.

**14. "Attested by a witness."**—Attestation by a witness is an essential element of a 'bond' under clauses (b) and (c).<sup>1</sup> Such attestation is not necessary for a 'bond' under cl. (a). It was remarked by the Lahore High Court in the undermentioned case<sup>2</sup> that the object of this distinction is not clear.

The term "attested" is not defined in this Act. In the case noted below<sup>3</sup> the definition in S. 3, Transfer of Property Act, was applied to this sub-section.

The "attestation" by a witness must appear on the face of the instrument<sup>3a</sup> and no external evidence is admissible to prove the fact of attestation.<sup>4</sup> Further, a person must sign a document as a witness in order to be treated as an attesting witness. Hence, where a person signs a document as a scribe or writer, he cannot be regarded as an *attesting* witness.<sup>5</sup> The contrary view expressed in the undermentioned cases<sup>5a</sup> is, it is submitted, not correct.

The requirement as to attestation by a witness under this sub-section is only for purposes of *stamp*. It does not make the instrument one "required by law to be attested" like, for instance, a mortgage.<sup>6</sup>

#### S. 2 (5)—NOTE 14

1. ('48) 35 AIR 1948 Oudh 258 (259), *Ram Dat Ram v. Lalta Prasad*. (The definitions of 'Bond' in S. 2 (5) is only meant for the purposes of Stamp Act and cannot be taken to apply generally to the term Bond. Hence a bond in general is not a document required by law to be attested within the meaning of S. 68 Evidence Act.)
- ('25) 12 AIR 1925 Oudh 188 (188) : 80 Ind Cas 860, *Dayal v. Bhimma*.
2. ('25) 12 AIR 1925 Lah 415 (416) : 6 Lah 276 : 86 Ind Cas 844 (DB), *Wadhwa Mal v. Karim Bakhsh*.
3. ('40) 27 AIR 1940 Oudh 83 (84) : 15 Luck 285 : 185 Ind Cas 347 (SB), *Har Narain Lal v. Udan Singh*.
- 3a. ('22) 9 AIR 1922 Cal 452 (453) : 49 Cal 729 : 67 Ind Cas 780 (DB), *Bidhuranjan Majumdar v. Mangan Sarkar*.
4. ('17) 4 AIR 1917 Pat 521 (522) : 2 Pat L Jour 686 : 41 I. C. 693 (SB), *Mohammad Sadik v. Amiya Nath*.
5. ('02) 1902 Pun Re No. 14, page 51 (52) : 1902 Pun L R No. 3 (FB), *Gurditta Mal v. Dhanna Singh*.
- ('40) 27 AIR 1940 Oudh 83 (84) : 15 Luck 285 : 185 Ind Cas 347 (SB), *Har Narain Lal v. Udan Singh*. (Statement that money was paid in his presence does not make him *attesting* witness.)
- ('95) 17 All 211 (211) : 1895 All W N 61 (FB), *Reference under Act 1 of 1879, S. 49*. (A mere statement made in writing, in the document by the scribe thereof to the effect that it has been written by his pen and is correct cannot amount to an 'attestation' by a witness necessary in the case of a bond under

- cl. (b) of sub-s. (4) of S. 3 of the Indian Stamp Act, 1879.)
- ('17) 4 AIR 1917 Pat 521 (522) : 2 Pat L Jour 686 : 41 Ind Cas 693 (SB), *Mohammad Sadik v. Amiya Nath*. ('W. by.....' was held to mean 'written by' and not 'witnessed by'.)
- ('22) 9 AIR 1922 Cal 452 (453, 454) : 49 Cal 729 : 67 Ind Cas 780 (FB), *Bidhuranjan Majumdar v. Mangan Sarkar*. (A document by which the executant promises to pay on demand to the person named in it a sum of money with interest bearing the signature of the scribe as its writer is a pronote and not a bond and one anna stamp is the proper stamp.)
- ('33) Mad S M p. 7 (7). (Citing, B. P. 2712, 16th December 1886.)
- [See also ('21) 8 AIR 1921 Cal 276 (276) : 66 Ind Cas 906 (DB), *Paban Khan v. Badal Sardar*.)]
- 5a. ('87) 10 Mad 158 (159) (FB), *Reference under Stamp Act*.
- (1887) 1887 Bom P J 302 (DB), *Nahanchand v. Ravji*. (An instrument by which R agreed to pay Rs. 26 but which was not made payable to order or bearer bore his mark and the words "signature of R, handwriting of B"—Held, that if B was present when R made his mark the words constituted a form of attestation and the instrument was a bond; if not it was a promissory note payable on demand.)
- [See also ('21) 8 AIR 1921 Cal 208 (208) : 48 Cal 61 : 62 I. C. 97 (DB), *Jagannath Khan v. Bajrang Das*.]
6. ('40) 27 AIR 1940 Nag 240 (240) : 188 Ind Cas 638, *Ramchandra Dhondaji v. Zibal Sivaram*.



See also Notes on S. 3 in A. I. R. Commentaries on the Transfer of Property Act, 2nd (1945) Edn.

**15. "Person."**—Under S. 13, General Clauses Act, the singular includes the plural. Hence, "person" in this sub-section includes "persons."

In *Doulattram Harji v. Vitho Raghoji*<sup>1</sup> an instrument purporting to be a bond was executed by a principal and his surety on one sheet of stamped paper of sufficient value. But the contract of the principal was written first and signed by him, and next after the principal's signature followed the contract of the surety, signed by him. The question was whether this paper was to be regarded as one or two instruments of bonds within the Stamp Act. It was held that the paper represented only one instrument and as the word 'person' in the definition of 'bond' included 'person' in the plural, the instrument was 'a bond' by a principal and surety, notwithstanding the apparent separation of clauses respectively relating to the principal's contract and that of the surety. The contract of the surety was incidental and accessory to that of the principal and being in respect of one and the same consideration constituted only a single instrument of bond.

**16. Bond by principal and surety.**—See Note 15 and S. 5 Note 9.

**17. Date of payment need not be stated.**—An instrument need not specify the date for payment in order to constitute a 'bond' under this definition.<sup>1</sup>

**18. Valuation for purposes of stamp duty.**—Where *ad valorem* duty is payable on a document, the value of the document is determined only by the primary engagement therein and not by the provisions as to penalty or damages agreed to be paid on breach of the contract.<sup>1</sup>

In case of bonds coming under clause (a) the primary engagement is what the document *professes* it to be and not what really is such engagement according to the intention of the parties. Hence, the value of the document for purposes of stamp duty will be the amount which the executant of the instrument obliges himself to pay under the instrument and not the value of the condition on which the obligation is to become void.<sup>2</sup> According to Halsbury's *Laws of England* (1911) Vol. 3, page 104 the words "amount secured" do not in the case of a money bond with a penalty mean the amount of the penalty, but the amount payable under the condition in order to avoid the bond. No decision is cited for the proposition. It is submitted that the proposition does not seem to be correct. It is a fundamental principle

#### S. 2 (5)—NOTE 15

1. ('81) 5 Bom 188 (191) (FB).

Also see S. 14 Note 1.

#### S. 2 (5)—NOTE 17

1. ('34) 21 AIR 1934 Nag 261 (261) : 31 Nag LR 108 : 153 Ind Cas 952, *Chhaganlal v. Emperor*. (Acknowledgment with attestation and promise to pay the amount signed by the debtor in creditor's account book and a separate chitti of even date with promise to pay interest—Ruju and chitty are one transaction—Contention that there being no date of payment, it is not bond—Held statement of date of payment is not part of definition of bond and that the ruju and chitti both together formed a bond.)

#### S. 2 (5)—NOTE 18

1. ('65) 3 Suth WR (SC) 14 (14, 16) (DB), *J. W. Smith v. Gopal Sheikh*.

('27) 14 AIR 1927 Nag 72 (74) : 98 Ind Cas 631, *Collector of Nimar v. Lakhmichandsa*. ('67) 5 Suth WR (SC) 10 (13) (DB), *John Doyle v. Mundaree Mundul*.

\*('87) 9 All 585 (589) (FB), *In re Gajraj Singh*. ('80) 2 All 654 (661, 662) (FB), *Reference under Stamp Act*. (Per Stuart C. J., dissenting from majority view.)

2. See ('80) 2 All 654 (663) (FB), *Reference under Stamp Act*. (Instrument by which a person bound himself in the event of breach of certain conditions to pay another a penalty of Rs. 5,000—Instrument held to be a bond within S. 3 (4)(a) of Act I of 1879 (now S. 2 (5) (a)) and duty was levied on Rs. 5,000. (Majority view—Stuart C. J., dissenting.) NOTE.—The view that such an instrument is a bond is not correct. See Note 3. But that question is apart.)

Also see S. 3 Note 12, S. 26 Note 7 and S. 27 Note 6.



that stamp duty is payable according to the tenor of an instrument and the question as to the substantive reliefs that may ultimately be decreed to parties is irrelevant for the purpose of stamp duty. The result of the proposition stated in Halsbury will be that where a bond is voidable on the doing of some act other than the payment of money, the document will have to contain, under S. 27, a statement of the value of the act so as to determine the value of the document under Art. 15. This position seems to be clearly untenable.

In the case of a simple money bond, the principle amount named in the bond will be the value for stamp duty. The interest payable need not be considered (See S. 23).<sup>3</sup>

In the case noted below<sup>4</sup> an instrument purporting to be a bond for a loan of Rs. 100 stipulated that the executant should pay Rs. 200, including Rs. 100 for interest in eight annual instalments as stated in the deed. It was held that it was a bond securing an amount of Rs. 200 and must be stamped for R. 200. It was also held that S. 23 did not apply to the case.

As regards the valuation of 'suttas' for the purpose of stamp duty see the following references.<sup>5</sup>

Chargeable.      \*(6) "chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in <sup>a</sup>[the Provinces], when such instrument was executed or, where several persons executed the instrument at different times, first executed:

a. Substituted "for British India" by I. O.

### Provincial Amendments.

#### MADRAS.

#### BANGANAPALLE

In section 2, for clause (6) the following clause shall be *substituted*, namely :—

"(6)'chargeable' means, as applied to an instrument executed or first executed on or after the 1st day of December 1948, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in Banganapalle State when such instrument was executed or, where several persons executed the instrument at different times, first executed."

—G. O. Ms. No. 2722, Rev., 16-11-1948 ; *Fort St. Geo. Gaz.*, Part I—*Extra.*, dated 16-11-1948.

Note :—Notwithstanding anything to the contrary contained in any other law, no document executed in the State of Banganapalle during the period commencing on the 1st April 1948 and ending with the 1st December 1948 shall be invalid merely by reason of the fact that the stamp duty thereon was paid in stamps by means of which the stamp duty under the Indian Stamp Act, 1899, was payable during the said period in the Province of Madras.—G. O. Ms. No. 2963, Rev., 13-12-1948, *Fort St. Geo. Gaz.*, 1948, Part I, page 1261.

\*[1879—S. 3 (5).]

3. (1900) 3 Bom L R 133 (135) (FB), *Vithu v. Nathusao*. (Bond for loan of Rs. 10 stated further that "interest on this sum amounts to Rs. 2-8-0—Total Rs. 12-8-0."—Debt to be repaid by 25 monthly instalments—Bond held liable to pay stamp on principal i.e., Rs. 10 only and not on Rs. 12-8-0 as the interest accrued under the bond itself—26 Cal

179 dissented from.)

4. ('99) 26 Cal 179 (181) (FB), *Sambhu-chandra v. Krishna Charan*.

5. ('31) Bengal Stamp Manual, Vol. I, Part II, App. B. pages 157-161.

('33) Mad S M p. 84-85. (Citing B. P. 422 22nd Jun 1889.)



## PUDUKKOTTAI

Same as that of Banganapalle except

- (i) for "1st day of December" substitute 12th day of August;"
- (ii) for "Banganapalle" substitute "Pudukkottai."

—G.O.Ms. No. 1872, Rev., 5-8-1948; *Fort St. George Gaz., Part I—Extra.*, dated 6-8-1948.

1. "Chargeable."—This clause is a mere reproduction of cl. (5) of S. 3 of the Stamp Act of 1879 with but a slight verbal variation. There was no corresponding provision in the several Stamp Acts that preceded the Act of 1879. But it was held in regard even to those Acts that the question of the proper amount of stamp must be determined with reference to the Act in force at the time of *execution* of the instrument.<sup>1</sup>

The expression "chargeable" means, with reference to an instrument, chargeable under the Act in force at the date of *execution* of the instrument.<sup>1a</sup> Consequently, the question whether stamp duty is payable on an instrument and if so what is the *duty chargeable* on the instrument, must be decided with reference to the Act in force at the date of execution of the instrument, though the *penalty* has to be determined by the Act in force at the time of its presentation in Court.<sup>2</sup>

Hence, where an instrument is not liable to stamp duty under the law in force at the time of its execution, no penalty can be exacted in respect of it under a later Act which makes such instruments liable to duty.<sup>3</sup>

In *Narayanan v. Karuppathan*,<sup>4</sup> the question related to an attested note which was a 'promissory note' under the Act of 1869 in force at the time of execution of the instrument but a 'bond' under the Act of 1879 which was in force at the time when the instrument was presented in Court. The document was not properly stamped. It was argued that as under the Act of 1879 the instrument only amounted to a *bond* and not a promissory note it was admissible in evidence on payment of penalty. (Section 34 of the Act, (now S. 35) made a *promissory note* inadmissible in evidence even on payment of penalty.) The contention was overruled and it was held that the instrument must be regarded as a *promissory note* the character which it had at the time material for determining the duty payable on it. It is submitted with respect that the decision does not seem to be correct. No doubt, as the judgment says, the expression "chargeable" relates to the time of execution. In considering the duty payable, therefore, the question as to whether the instrument was a promissory note or not must be considered with reference to the interpretation clause in the Act of 1869. But for the purpose of its admissibility under S. 35, it is only the definition

## Section 2 (6)—NOTE 1.

1. ('66) 1 Mad H C R 226 (228) (DB), *Chinnaiya Nattan v. Mutthuswami Pillai*. [See also ('76) 2 Cal 58 (87, 88): 1 Ind Jur 337, *Moran v. Muttu Bibee*. (Question of stamp must depend on state of things existing at the time of execution of the instrument.)]

Also see S. 35 Note 2.

- 1a. ('81) 3 Mad 251 (253) (DB), *Narayanan Chetti v. Karupathan*.

2. ('82) 5 Mad 394 (396): 7 Ind Jur 16 (FB), *Reference under Stamp Act, S. 46*.

('85) 1885 Pun Re (Rev.) No. 7, page 10 (10), *In the matter of the application of Devi Ditta Mal*.

('33) Mad S M p. 7. (Citing, B. P. 2554, 20th October 1882.)

Also see S. 2 (11) Note 2.

3. ('91) 14 Mad 255 (258) (FB), *Reference under Stamp Act, S. 46*. (Case relating to instrument executed abroad when Stamp Act of 1860 under which the instrument was not liable to duty, was in force—No penalty could be levied in respect to such instrument, under Act of 1879.)

4. ('81) 3 Mad 251 (253) (DB).



given in the Act in force at the time of the presentation of the instrument that would be relevant.<sup>5</sup> Innes, J., observed as follows in the course of his judgment :

“It appears to me that the levy of a penalty authorised under the proviso, on the admission of an insufficiently stamped document implies a punishment for neglect in failing to affix the proper stamp at the time of *execution*. There would be no justification for the levy of a penalty on account of the increased stamp duty leviable under the Act in force at the date of *presentation* over that leviable under the Act in force at the date of *execution*.”

It is hard to appreciate the above remarks in the context of this case. They seem to suggest that in the case on hand the stamp duty paid was *sufficient* under the law in force at the time of execution although it would be insufficient if the later Act were held applicable. If so, it is difficult to comprehend how the question of insufficiency of stamp duty would arise at all. The question could have arisen only on the assumption that the proper stamp duty even according to the Act of 1869 had not been paid.

In Mulla and Pratt's Stamp Act, Fourth Edition, 1941, p. 18, it is stated that in the above case the Court held that the duty being one anna at the time of execution, the document could not be admitted. This is not what the Court held. The decision was : “Under the Act of 1869, it is clearly a promissory note and, as such, is not admissible in evidence, not being duly stamped.” As already remarked, the fact that the document was a promissory note under the Act of 1869 was immaterial for the question before the Court.

See also S. 35 and Notes thereon.

For instruments chargeable under this Act, see S. 3 and Notes thereon.

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**\*(7) “cheque” means a bill of exchange drawn on a specified banker and not “Cheque.” expressed to be payable otherwise than on demand:**

**1. Cheque.**—This definition is substantially the same as that in S. 6, Negotiable Instruments Act. The definitions in the Acts of 1869 and 1879 were drawn in slightly different terms. The definition has been altered so as to bring it into accord with the definition in the Negotiable Instruments Act.

According to the definition, three things are necessary for an instrument to be a cheque. Firstly, it must be a bill of exchange, secondly, it must be drawn on a banker, and thirdly, it must be payable on demand. The parties to a cheque are the drawer, i.e., the person who draws the cheque, the drawee, i.e., the banker; and the payee, i.e., the person named in the cheque to whom the money is to be paid.

A cheque, though in many respects resembling a bill of exchange is in some respects entirely different. A cheque is drawn on a banker, while a bill of exchange may be addressed to a person other than a banker. Moreover, a cheque is payable on demand, while a bill of exchange may be payable on demand or at any specified time.

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<sup>\*</sup>[1879—S. 3 (6) ; 1869—S. 3 (8).]

5. See (1974) 13 Beng L R (App) 33 : 21 Suth W R 446 (446), *Nandun Misser v. Mt. Chittur Buttee*. (Instrument executed prior to 1869

Act held promissory note under that Act and inadmissible in evidence.)



The Judicial Committee of the Privy Council in *Ramchurn Mullick v. Lutchmeechund*<sup>1</sup> observed :

"....a banker's cheque,... is a peculiar sort of instrument, in many respects resembling a bill of exchange, but in some entirely different. A cheque does not require acceptance; in the ordinary course it is never accepted; it is not intended for circulation, it is given for immediate payment, it is not entitled to days of grace; and though it is, strictly speaking, an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet, in the ordinary understanding of persons, it is not so considered. It is more like an appropriation of what is treated as ready money in the hands of the banker, and in giving the order to appropriate to a creditor, the person giving the cheque must be considered as the person primarily liable to pay, who orders his debt to be paid at a particular place, and as being much in the same position as the maker of a promissory note, or the acceptor of a bill of exchange, payable at a particular place and not elsewhere, who has no right to insist on immediate presentment at that place."<sup>2</sup>

A cheque is not an assignment of money in the hands of a banker; it is a bill of exchange payable at a banker's. The banker is bound by his contract with the customer to honour the cheque, when he has sufficient assets in his hands; if he does not fulfil his contract he is liable to an action by the drawer in which heavy damages may be recovered if the drawer's credit has been injured.<sup>3</sup>

An instrument which purports to acknowledge receipt of a sum of money from the saving account of a depositor with a bank and specifies the name of the messenger who is to receive payment, is only a receipt and not a cheque.<sup>4</sup>

A agreed to lend money to B for payment of B's trade debts. In pursuance of the agreement B gave his creditors 'chits' for certain sums. These chits were addressed to A and requested him to pay the amounts mentioned therein. It was held that the chits were not cheques as A was not a banker.<sup>5</sup>

The endorsement "passed for payment" by the President of a District Board on travelling allowance and other bills presented to the Treasury Officer is not of the nature of a cheque.<sup>6</sup> The reason is that the Treasury Officer is not a banker. (See Notes on S. 2 (1).)

*Stamp-duty*—Stamp-duty on cheque has now been abolished by omitting Art. 21 of Schedule I.

2. Bill of exchange, meaning of.—See S. 2 (2) and Notes thereon.

3. "Banker"—Meaning of.—See S. 2 (1) and Notes thereon.

#### Section 2 (7)—NOTE 1

1. (1854) 14 E R 215 (223) : 9 Moo P C 46 (69).
2. (1841) 174 E R 331 (331) : 2 M & Rob 401 (404), *Serle v. Norton*. (This case is to the same effect as (1854) 14 E R 215 : 9 Moo P C 46.)
3. (1874) 19 Eq 74 (76) : 23 W R (Eng) 301, *Hopkinson v. Forster*.
4. ('12) 13 Ind Cas 330 (330) (SB) (Lah), *In re Stamp Act*.
5. ('93) 17 Bom 684 (685) (FB), *Ratulal Rangildas v. Vrijbhukhan Parabhuram*. Also see S. 2 (1) Note 2 and S. 2 (2) and 3 Note 17.
6. ('33) Mad S M p. 7. (Citing, B. P. 263,

14th May 1892 : 511, 7th October 1892—The endorsement "passed for payment," of the President of a District Board on travelling allowance and other bills is not of the nature of a cheque. All that the Treasury Officer can claim is a receipt from the payee in proper form and stamped with a 1 anna receipt stamp when the sum paid exceeds Rs. 20. The 'payee' so far as the Treasury Officer is concerned, is the Local Board which should therefore furnish a stamped voucher to the Treasury Officer, notwithstanding that it obtain a stamped receipt on the acquittance roll or otherwise. The stamp is required in the former to validate the Treasury Officer's voucher and in the latter that of the Local Board.)



**4. Post-dated cheque.**—Post-dated cheques are cheques issued on one date though on them a subsequent date is inserted. A cheque whether payable to bearer or to order is not rendered void by post-dating it and is admissible in evidence in an action brought after the date of the cheque by the holder although he took with knowledge of the post-dating.<sup>1</sup> The fact that a cheque is post-dated does not make it a bill of exchange payable otherwise than on demand.<sup>2</sup> Hence in India a post-dated cheque is admissible in evidence although it is not stamped as a bill of exchange.<sup>3</sup> It may be noted that under S. 68, post-dating of bills of exchange and promissory notes alone is made punishable and not the post-dating of cheques.

(8). [Chief Controlling Revenue-authority.] *Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.*

### Provincial Amendment.

#### BOMBAY

In Section 2, after Clause (7), the following clause shall be *inserted* namely:—

“(8) ‘clearance list’ means a list of transactions relating to contracts required to be submitted to the clearing house of an association in accordance with the rules or by laws of the association:

Provided that no instrument shall for the purposes of this Act, be deemed to be a clearance list, unless it contains the following declaration signed by the person dealing in such transactions or on his behalf by a properly constituted attorney, namely:—

‘I/We hereby solemnly declare that the above list contains a complete and true statement of my /our transactions, and that it includes all the transactions required to be submitted to the clearing house in accordance with the rules / by-laws of the association. I/We further declare that no transaction relating to the purchase or sale on my /our own behalf or on behalf of a principal for which an exemption is claimed under Article 5 or Article 43 in Schedule I to the Indian Stamp Act, 1899, in its application to the Province of Bombay, as the case may be, is omitted.’ ”

—*Bombay Act II of 1949, S. 7 (1) [1-4-1949].*

#### S. 2 (7)—NOTE 4

1. (1894) 2 Q B 715 (718, 719): 64 L J Q B 99: 71 L T 168: 43 W R (Eng) 22, *Royal Bank of Scotland v. Tottenham*.  
(1863) 143 E R 441 (444): 32 L J C P 161: 8 L T 317: 11 W R (Eng) 648, *Whistler v. Forster*. (A cheque payable to order.)  
(1877) 2 Ex D 265 (267): 46 L J Ex 605: 36 L T 182: 25 W R (Eng) 305, *Gatty v. Fry*. (A stamped cheque payable to bearer.)  
(1868) 17 L T 646 (646): 9 B & S 121, *Emanuel v. Roberts*. (A post-dated cheque is not an illegal instrument, and but for special circumstances, a banker is not justified in refusing payment.)  
(1871) 6 Q B 209 (212): 40 L J Q B 141: 24 L T 130, *Bull v. O'Sullivan*. (There is nothing which makes it illegal to post-date a cheque or other order for the payment of money.)  
(’04) 6 Bom L R 699 (702), *Motilal Shival v. Jagmohandas Vundravandas*.

- (’89) 16 Cal 432 (435) (DB), *Ramen Chetty v. Mahomed Ghouse*.  
[See also (’26) 13 A I R 1926 Mad 1154 (1155): 98 Ind Cas 308, *Nallaya Goundan v. Palani Goundan*. (Case relating to ante-dating of endorsement on promissory-note.)]
2. (’89) 16 Cal 432 (435) (DB), *Ramen Chetty v. Mahomed Ghouse*.  
[But see (1867) 2 Ex 163 (167): 36 L J Ex 94: 16 L T 23: 15 W R (Eng) 747, *Forster v. Mackreth*. (So far as regards its practical effect, a post-dated cheque is the same thing as a bill of exchange at so many days date as intervene between the day of delivering the cheque and the date marked upon the cheque.)]
3. (’04) 6 Bom L R 699 (702), *Motilal Shival v. Jagmohandas Vundravandas*.  
(’25) 12 A I R 1925 Cal 1007 (1009): 52 Cal 677: 90 Ind Cas 59, *Walter Mitchell v. A. K. Tennent*.



1. **“Chief Controlling Revenue-authority.”**—Sub-section (8) which has been repealed by the Government of India (Adaptation of Indian Laws) Order, 1937 contained the definition of “Chief Controlling Revenue-authority” which was as follows ;

“Chief Controlling Revenue-authority” means—

(a) in the Presidency of Fort St. George, the Presidency of Fort William in Bengal and the territories respectively under the administration of the Lieutenant Governors of Bihar and Orissa and the North-Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue;

(b) in the Presidency of Bombay, outside Sind and the limits of the town of Bombay—a Revenue Commissioner ;

(c) in Sind—the Commissioner;

(d) in the Punjab and Burma, including Upper Burma—the Financial Commissioner; and

(e) elsewhere—the Local Government or such officer as the Local Government may, by notification in the Official Gazette appoint in this behalf:”

For the definition of the expression see now the General Clauses Act, 1897 (X of 1897), S. 3 (9a) inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 and adapted by the India (Adaptation of Existing Indian Laws) Order, 1947, which runs as follows:

“Section 3 (9a) “Chief Controlling Revenue-authority” or “Chief Revenue-authority” shall mean—

(a) in provinces where there is a Board of Revenue, that Board;

(b) in provinces where there is a Revenue Commissioner, that Commissioner ;

(c) in the East Punjab, the Financial Commissioner; and

(d) elsewhere, such authority as, in relation to matters enumerated in List 1 in the Seventh Schedule to the Government of India Act, 1935, the Central Government, and in relation to other matters, the Provincial Government, may by notification in the Official Gazette appoint.”

The expression has been used in the following sections of the Act :—Ss. 45, 51, 56, 57, 60, 70 and 76A.

It has been held by the High Court of Bombay that a Conservator of Forests is not the “Chief Controlling Revenue-authority.”<sup>1</sup>

“Collector.”   \*(9) “Collector”—

(a) means, within the limits of the <sup>a</sup>[towns of Calcutta and Madras and of the City of Bombay], the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a district ; and

(b) includes a Deputy Commissioner and any officer whom <sup>b</sup>[the collecting Government] may, by notification in the official Gazette, appoint in this behalf:

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\*[1879—S. 3 (8) ; 1869—S. 3 (9).]

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Section 2 (8)—NOTE 1  
1. ('93) 1893 Bom P J 449 (FB), *Forest Contractors v. Secretary of State.*  
Also see S. 57 Note 2.



- a. *Substituted* for the words "towns of Calcutta, Madras and Bombay" by the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 (Bom. Act. XVII of 1945), S. 9 and Sch. E. By S. 8 of this Bombay Act it is provided that, 'City of Bombay' shall mean the area within the local limits of the ordinary original civil jurisdiction of the High Court immediately before the commencement of the said Bombay Act.
- b. Substituted for "the Local Government" by A. O.

### Notifications.

#### CENTRAL GOVERNMENT

All functions of the Central Government under, or in relation to, cl. (9) of section 2 have been entrusted to Provincial Government—See Government of India Finance Department (Central Revenues) Notification No. 9 dated 13-11-1937.

#### BIHAR

The term 'Collector' includes the Additional Deputy Commissioner of Manbhum within the limits of the subdivision of Dhanbad—Government of Bihar and Orissa, Finance Department, Notification No. 7165-F., dated 31-12-1923.

#### BOMBAY

The Assistant Superintendent of Stamps, Bombay, has been appointed 'Collector' under Chapters II, III, IV, V and VIII. The Assistant Superintendent of Stamps, Karachi, has been appointed 'Collector' under Chapters IV and V and sections 18, 41, 42 and 51 of the Indian Stamp Act—Bombay Stamp Manual, 1937, page 2.

#### CENTRAL PROVINCES

For notification appointing all Assistant Commissioners and Extra-Assistant Commissioners who are Sub-Divisional Officers as Collectors under this Act in the Central Provinces, see *Central Provinces Gazette*, 1911, Part I, page 433.

#### MADRAS

The power to appoint 'Collector' under the Stamp Act has been delegated to the Board of Revenue—See G. O. 2911, Separate Revenue, dated 6-10-1914 cited in (1933) Madras Stamp Manual, page 8.

#### PUNJAB

In the case of Lahore district the powers of Collector have been conferred on the First Assistant to the Deputy Commissioner, Lahore. The power of Collector to sanction allowances for non-judicial stamps under Chapter V of the Stamp Act have also been conferred upon all officers in charge of treasuries who have passed the treasury branch of the departmental examination—See Punjab Government notification No. 28321-F., dated 4-10-1928 and No. 4983-E. & S., dated 14-8-1934 cited in (1934) Punjab Stamp Manual, Part I-B, Ch. 3, para. 2 (vii).

"Conveyance" <sup>\*(10)</sup> "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I :

### Provincial Amendments.

#### BENGAL

Add at the end of the clause the words "or by Schedule I-A, as the case may be"—Beng. Act III of 1922, S. 3. [1-4-1922.]

\*[1879—S. 3 (9) ; 1869—S. 3 (11). Cf. (1870) 33 & 34 Vict. C. 97—S. 70 ; (1891) 54 & 55 Vict. C. 39—S. 54.]



**BIHAR**

Same as that of Bengal—Bihar Act VI of 1937, S. 3. [1-1-1938.]

**CENTRAL PROVINCES**

Same as that of Bengal—C. P. & Berar Act VI of 1939, S. 2. [1-7-1939.]

**MADRAS**

Same as that of Bengal—Mad. Act VI of 1922, S. 3. [25-4-1922].

**ORISSA**

Same as that of Bengal—Orissa Act VI of 1943, S.3. [26-4-1943]

**PUNJAB**

Same as that of Bengal—Punj. Act VIII of 1922, S. 4. [15-1-1923]

**UNITED PROVINCES**

Same as that of Bengal—U. P. Act III of 1936, S.2. [1-5-1936]

**Synopsis**

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| <ol style="list-style-type: none"> <li>1. Legislative changes.</li> <li>2. "Conveyance."</li> <li>3. "Conveyance on sale."</li> <li>4. Conveyance for a term.</li> <li>5. "Property."</li> <li>6. Assignment of debt.</li> <li>7. Sale of good-will of business.</li> <li>8. Trade-mark, patent, etc.</li> <li>9. Assignment of contracts.</li> <li>10. Family arrangement.</li> <li>11. Company cases.</li> <li>12. Agreement to convey.</li> </ol> | <ol style="list-style-type: none"> <li>13 Hire-purchase agreement. See Note 12 and Art. 5 Note 3.</li> <li>14. There must be an instrument of conveyance.</li> <li>15. Instrument of conveyance failing to operate as such.</li> <li>16. Instrument merely recording oral transaction.</li> <li>17. Certificate of sale.</li> <li>18. Covenants.</li> <li>19. Transfer of share in partnership business.</li> </ol> |
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1. **Legislative changes.**—The Stamp Acts of 1860 and 1862 did not contain a definition of the term "conveyance" though Arts. 19 and 23 of those Acts respectively provided for the payment of stamp duty on conveyances.

The definition was for the first time introduced in the Act of 1869. Clause (11) of S. 3 of that Act was as follows :

"'Conveyance' means any instrument (except a transfer of a share in a Company or Association, a mortgage-deed, a settlement, a lease, an instrument of reconveyance of mortgaged property, a composition-deed, an instrument of gift, or an instrument of exchange or partition-deed, where no money is paid for equality of exchange or partition) by which property is conveyed *inter vivos*." In the Act of 1879 the definition was materially altered. Clause (9) of S. 3 of that Act stood as follows :

"'Conveyance' means any instrument by which property (whether movable or immovable) is transferred on sale."

The definition being restricted to transfers on *sale*, it was held, in a case arising under this Act, that a deed, by which a brother conveyed a pargana and a sum of money to his younger brother, on condition that he should release certain family property on which he had claims, was not a conveyance as the transfer was not made by way of *sale*.<sup>1</sup>

The definition in the present Act has removed this restriction and has widened the meaning of the term "conveyance" so as to include therein all transfers *inter vivos*.<sup>2</sup> The deed in the above mentioned case would now be a conveyance.

Section 2 (10)—NOTE 1

1. ('81) 7 Cal 21 (23) (FB), *In the matter of the Maharajah of Durbhungah*.

2. See the Report of the Select Committee, page 66.



2. "Conveyance."—The word "conveyance" is defined by this clause to include (1) a conveyance on sale and (2) every instrument by which property, whether moveable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Sch. I.<sup>1</sup>

Thus, the following instruments are outside the definition :

1. Agreement relating to deposit of title-deeds, pawn or pledge (Art. 6);
2. Composition-deed (Art. 22) ;
3. Exchange of property (Art. 31) ;
4. Gift (Art. 33) ;
5. Lease (Art. 35) ;
6. Mortgage-deed (Art. 40) ;
7. Mortgage of crop (Art. 41) ;
8. Re-conveyance of mortgaged property (Art. 54) ;
9. Release (Art. 55) ;
10. Settlement (Art. 58) ;
11. Transfer of shares, etc. (Art. 62) ;
12. Transfer of lease (Art. 63) ;
13. Trust (Art. 64).

The Provincial Legislatures of Bengal, Bihar, Central Provinces, Madras, Orissa, Punjab and the United Provinces have added the words "or by Sch. 1A, as the case may be," to this clause. Hence, any instrument that is specifically provided for by Sch. 1A in the above Provinces will also not come within the definition of conveyance. The clause does not attempt any precise definition of the term "conveyance."<sup>1a</sup> Nor is the definition exhaustive.<sup>2</sup>

Wharton defines "conveyance" as an instrument which *transfers* property from one person to another.<sup>3</sup> Under this sub-section also, an *actual* transfer of property is an essential feature of a conveyance.<sup>4</sup> An instrument which merely acknowledges as a fact that a right is vested in a particular person is not a conveyance but it must be shown that a right was created by the particular instrument in question.<sup>5</sup>

#### S 2 (10)—NOTE 2

1. ('45) 32 AIR 1945 Lah 69 (72) ILR (1946) Lah 185 (SB), *Miran Baksh v. Emperor*.

1a. ('18) 5 AIR 1918 Lah 354 (355) : 1918 Pun Re No. 115 : 44 Ind Cas 261 (SB), *Rustomji v. Emperor*.

2. ('41) 43 Pun L R 294 (296), *Purshotam Das v. Emperor*.

3. Wharton : *Law Lexicon*, 14th Edition, page 253.

4. ('18) 5 AIR 1918 Lah 354 (355) : 1918 Pun Re No. 115 : 44 Ind Cas 261 (SB), *Rustomji v. Emperor*.

('34) 21 AIR 1934 Lah 530 (532) : 15 Lah 501 : 150 Ind Cas 781 (SB), *Bholaram and Sons v. Emperor*.

('41) 43 Pun L R 294 (296), *Purshotam Das v. Emperor*. (Certain definitions in S. 2, e.g., that of "Settlement" include a document made subsequent to the actual transaction for the purpose of recording it, but in the case of a conveyance the document to be liable to stamp duty as a conveyance must be the document by which property is actually transferred.)

5. ('32) 19 AIR 1932 Lah 535 (536) : 14 Lah 102 : 139 Ind Cas 154 (SB), *Md. Hasham v. Emperor*. (Document not conveyance merely because it "declares" the vendee's right.)



The test, therefore, to determine whether an instrument is a conveyance is whether the intention of the parties was that the instrument should be the only repository and the appropriate evidence of the transfer. If the Court finds that this is so, it must hold the instrument to be a conveyance. If, on the other hand, it merely recites a past accomplished fact, the instrument is not a conveyance.<sup>6</sup>

Thus, where a document recited that the executant had sold a certain land for a money consideration, that out of the consideration a certain amount had been received and for the balance another receipt would be given at the time of payment and that the possession of the land had been given to the purchaser, it was held that the document was a receipt and not a conveyance.<sup>7</sup> Similarly, where a document stated, "I am enclosing herewith the original sale-deed in respect of the land which I have sold to you for the sum of Rs. 1000 and in respect of which I have already received the purchase-money from you" it was held that the document was not a conveyance.<sup>8</sup> So also, where a company sold certain silk filatures and other property connected therewith and the deed of transfer recited, *inter alia* that the movables had been already delivered, it was held that the movables were not transferred by the deed and so no stamp duty could be charged in respect of them.<sup>9</sup>

But if the parties to an instrument have so expressed themselves as to make it apparent on the face of the instrument that the writing was intended to be the record of the transfer then being made, the instrument will operate as a conveyance and it is immaterial whether the words used be in the past tense or in the present.<sup>10</sup> Thus, a memorandum that A. B. has sold the goods and fixtures in a shop to C. D. was held to be a conveyance.<sup>11</sup> Similarly, where a deed of sale, by which a partner sold 1/16th share in the partnership, recited that the 1/16th share of the personalty had been delivered over to the purchaser before the execution of the deed and the question was whether the 1/16th share of the personalty was conveyed by the deed or independently of it, it was held that the share was intended to pass and did pass by the deed itself.<sup>12</sup> Again, where a *kabin-nama* recited the transfer of property it was held that it was liable to stamp duty as a conveyance even though it was worded in such a way as to show that the transfer had already taken place.<sup>13</sup>

6\*('32) 19 AIR 1932 Lah 535 (536) : 14 Lah 102 : 139 Ind Cas 154 (SB), *Md. Hasham v. Emperor*.

(6 Ind Cas 346, relied on.)

[See ('34) 21 AIR 1934 All 201 (203) : 56 All 680 : 150 Ind Cas 672 (DB), *Raghubar Dayal v. Emperor*. (Ornaments sold—Entry in purchaser's account book by seller giving description of goods and price paid—Entry held amounted not to conveyance but to memorandum of sale and receipt for price.)]

7\*('32) 19 AIR 1932 Lah 535 (536) : 14 Lah 102 : 139 Ind Cas 154 (SB), *Md. Hasham v. Emper.* Also see Art. 53 Note 2.

8. ('18) 5 AIR 1918 Lah 354 (355) : 1918-Pun Re No. 115 : 44 Ind Cas 261 (SB), *Rustomji v. Emperor*.

9. ('96) 23 Cal 283 (288) (FB), *In re Reference under the Stamp Act, 1879*.

[See also ('33) Mad S M p. 9. (Citing, G. O. Mis. 1184, Revenue, 22nd July 1926; B. P's

215-R., Mis., 9th July 1926 and 208-R., Mis., 19th July 1932—Movable property can be transferred by delivery. It is not necessary that it should be transferred by a deed. The value of the movable properties conveyed previously, of which mention is made either as a preamble in or in the body of a subsequent deed conveying immovable properties to the same purchaser should be excluded when the question of stamp duty is under consideration.)]

10. (1848) 17 L J Ex 266 (268) : 11 L T (O S) 271 : 154 E R 705 : 2 Exch 778, *Horsfall v. Hey*.

11. (1848) 17 L J Ex 266 (268) : 11 L T (O S) 271 : 154 E R 705 : 2 Exch 778, *Horsfall v. Hey*.

12. ('86) 12 Cal 383 (387) (FB), *In re the Menglas Tea Estate*.

13. ('35) 22 AIR 1935 Lah 122 (123), *Mt. Miraj Begam v. Seth Ram Parshad and Sons*.



In order to determine whether an instrument is a conveyance or any other document the *substance* of the instrument must be considered.<sup>13a</sup> (See also Note 3.)

A document was executed in favour of a widow whereby the executant, in pursuance of a *razinama* filed in a suit for maintenance brought by the widow, made over to her a piece of land valued at a certain sum in satisfaction of her claim for maintenance with power to alienate and subject only to the condition that no further claim for maintenance was put forward. It was held that the document was neither a gift nor settlement but must be treated as a conveyance and stamped accordingly.<sup>14</sup>

A confirmatory letter with reference to a mortgage by deposit of title-deeds is not an instrument of conveyance so as to be liable to the payment of stamp-duty.<sup>15</sup>

A letter by the official assignee given in reply to a notice by the mortgagee sent as required by R. 12 of Sch. 2 of the Presidency Towns Insolvency Act, expressing his inability to redeem the mortgage within the time allowed by law, is not an instrument of conveyance as it does not purport to *transfer* any property.<sup>16</sup>

A deed of *reconveyance* is a conveyance.<sup>17</sup>

**3. "Conveyance on sale."**—The expression "conveyance on sale" is not defined in this sub-section. It has been defined by S. 54 of the English Stamp Act of 1891, (54 & 55 Vict. C. 39), as including :

"Every instrument, and every decree or order of any Court or of any commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction."

Under this definition an order of foreclosure was held to be a conveyance on sale.<sup>1</sup> But in view of the definitions of sale given in the Transfer of Property Act, 1882, and the Sale of Goods Act, 1930, which contemplate a transfer of property by one person to another, a decree for foreclosure will not be a "conveyance on sale" under the Indian law.

In determining the question whether an instrument is liable to stamp duty as a conveyance on sale, the substance of the transaction alone is to be looked at.<sup>2</sup> Thus,

<sup>13a</sup> ('43) 30 AIR 1943 Oudh 169 (171) : 204 Ind Cas 363, *Hubraji v. Deputy Commissioner, Fyzabad*. (Hindu widow by deed transferring possession of her husband's property to which she had succeeded to her daughter and grand-children—*Held*, that in effect and substance nature of deed was deed of transfer or conveyance.)

Also see S. 3 Note 12.

<sup>14</sup>. ('98) 21 Mad 422 (425) (DB), *Reference under Stamp Act, S. 46*.

Also see Art. 33 Note 4.

<sup>15</sup>. ('32) 19 AIR 1932 Sind 73 (75) : 26 Sind L R 29 : 139 Ind Cas 95, *Tyabali v. Parpatibai*.

<sup>16</sup>. ('32) 19 AIR 1932 Sind 73 (75) : 26 Sind L R 29 : 139 Ind Cas 95, *Tyabali v. Parpatibai*.

<sup>17</sup>. ('10) 32 All 171 (175) : 5 Ind Cas 697 (DB), *Emperor v. Rameshar Das*.

S. 2 (10)—NOTE 3

<sup>1</sup>. (1907) 1 Ch 249 (255) : 76 L J Ch. 246 : 96 L T 382, *In re Lowell and Collard's Contract*.

<sup>2</sup>. (1894) 1 Q B 507 (513) : 63 L J Q B 405 : 70 L T 86 : 42 W R (Eng) 211, *Great Western Railway Co. v. Commissioners of Inland Revenue*.

† ('86) 12 Cal 383 (386) (FB), *In re the Menlgas Tea Estate*.

\* (1866) 2 Ex 46 (50) : 4 H & C 664 : 36 L J Ex 11 : 15 L T 282 : 15 W R (Eng) 258, *Christie v. Commissioners of Inland Revenue*.

(1897) 2 Q B 423 (427) : 66 L J Q B 732 : 77 L T 270 : 46 W R (Eng) 1, *Coats, Ltd. v. Commissioners of Inland Revenue*.

('93) 16 Mad 85 (89) : 3 Mad L Jour 30 (DB), *Subharaya v. Vythilinga*. (Composition with creditors—Debtor's estate vested by order of Insolvency Court in trustees—*Held* on construction that the document which had been executed was a composition deed and not a conveyance.)



in *Christie v. Commissioners of Inland Revenue*,<sup>3</sup> by an indenture, which recited a previous agreement between two partners by which the partnership was dissolved and the share due to the retiring partner ascertained and partly paid in cash and partly secured by a mortgage and by assignment of policies of insurance, the retiring partner in pursuance of the agreement, conveyed to the remaining partner all his estate and interests in the partnership property and assets. The contention was that this transaction was not a conveyance but an arrangement between the parties to facilitate the dissolution of the partnership. It was held that the substance of the transaction collected from the deed was a sale and therefore the indenture was chargeable with *ad valorem* duty as a conveyance on sale.

Similarly, where a railway company was amalgamated with another railway company by an Act of Parliament, the shareholders of the former company being made stock-holders of the latter company in lieu of their shares in the former company, and a copy of the Act was made chargeable with stamp duty as an executed instrument in writing, it was held that the transaction by which the amalgamation was effected was in substance a transfer on sale and the copy of the Act was, therefore, chargeable as a conveyance on sale.<sup>4</sup>

So also, where a transaction is in substance a sale of a share in a partnership and the transfer of a share in a lease only forms part of the subject-matter of the sale as being a part of the partnership assets, the transaction should be regarded, not as the transfer of a lease, but as the sale of a share in a partnership.<sup>5</sup>

But, where the substance of the transaction gathered from the deed shows that the transfer of a lease did not form part of the subject-matter of the sale of a business, the whole transaction cannot be regarded as a conveyance on sale.<sup>6</sup>

In the undermentioned case,<sup>7</sup> having regard to the substance of the transaction, an instrument was held to be a composition-deed and not a conveyance.

If an instrument operates as a conveyance, it is immaterial by what term the parties choose to call it.<sup>8</sup> Thus, instruments which were described as a memorandum<sup>9</sup> and a release<sup>10</sup> were held to be conveyance on sale. See also the under-

(1872) 20 W R (Eng) 610 (612) : 26 L T 633 : 7 Ex 211 : 41 L J Ex 106, *Limmer Asphalt Paving Co. v. Commissioners of Inland Revenue*. (For the purposes of stamp duty it is requisite to ascertain the legal effect and meaning of an instrument, and the description of it given by the parties there to is immaterial and there can be no estoppel.)

Also see S. 3 Note 12 and Art. 22 Note 1.

3. (1866) 2 Ex 46 (52) : 4 H & C 664 : 36 L J Ex 11 : 15 L T 282 : 15 W R (Eng) 258.

Also see Note 19.

4. (1894) 1 Q B 507 (512) : 63 L J Q B 405 : 70 L T 86 : 42 W R (Eng) 211, *Great Western Ry. Co. v. Commissioners of Inland Revenue*.

5. ('86) 12 Cal 383 (388) (FB), *In re the Menglas Tea Estate*.

Also see Note 19.

6. ('96) 23 Cal 283 (288, 290) (FB), *In re Reference under the Stamp Act 1879*.

7. ('92) 16 Mad 85 (89) : 3 Mad L Jour 30 (DB), *Subbaraya v. Vuthilinga*.

8. (1848) 17 L J Ex 266 (268) : 2 Ex 778 : 11 L T (os) 271 : 154 E R 705, *Horsfall v. Hey*.

9. (1848) 17 L J Ex 266 (268) : 2 Ex 778 : 11 L T (os) 271 : 154 E R 705, *Horsfall v. Hey*.

10. ('08) 32 Bom 505 (508) : 10 Bom L R 730 (FB), *In the matter of Hiralal Navalram*. (Where by a document, the executing party, purporting to be entitled to a share in a going Pressing Factory, transfers absolutely the whole of that share to the other person interested in the factory in consideration of a certain sum, the document is a conveyance on sale of property.)

('43) 30 AIR 1943 Oudh 169 (172) : 204 Ind Cas 363, *Hubraji v. Deputy Commissioner, Fyzabad*. (Hindu widow by deed of *dastbardari* (deed of relinquishment) transferring possession of her husband's property to her daughter and grand-children—Deed held to be a conveyance—Description in deed that it was *dastbardari* held to be misnomer.)

('40) Bihar S. M p. 154.



mentioned case.<sup>11</sup>

According to some English decisions, the term "conveyance on sale" has been held to include an Act of Parliament by which a transfer of property for consideration is effected. Thus, where, by a special Act of Parliament a limited company was dissolved and reincorporated with additional powers, the property of the dissolved company being thereby vested in the new company, and the shareholders being given stock of the new company in substitution for the stock of the old company it was held that the property "vested by way of sale" in the new company within the meaning of S. 12 of the Finance Act of 1895 (58 & 59 Vict. c. 16), notwithstanding that there was no contract of sale between the two companies by reason of their never being in existence at the same time, and that a copy of the Act which was made chargeable with stamp duty as a conveyance on sale was liable to duty as such.<sup>12</sup>

In *Great Western Railway Co. v. Commissioners of Inland Revenue*<sup>13</sup> Lord Esher, M. R. observed as follows:

"Turning to the Stamp Act, the words used are "a conveyance on sale." Does that expression mean a conveyance where there is a definite contract of purchase and sale? Is that the way to construe the Stamp Act, or does it mean a conveyance the same as if it were upon a contract of purchase and sale? The latter seems to me to be the meaning of the phrase as there used."

In that case, by an Act a railway company was amalgamated with the appellant railway company, the undertaking of the former company being transferred to the appellant company and the shareholders of the former company being given the stock of the appellant company in exchange for the stock of the former company. A copy of the Act was to be chargeable as an executed instrument in writing. It was held that the transaction was as if it were upon a contract of purchase and sale and that, therefore, the copy of the Act was chargeable with stamp duty as a conveyance on sale. This case has already been noticed above in another connection.

A sale is not the less a sale because the contract of sale is worked out by or under an order of a Court; and where an instrument of conveyance is executed by an order of a Court, it cannot be said that the sale has taken place by the order of the Court itself and not by virtue of the conveyance. Thus, a conveyance by a mortgagor pursuant to the order of the Court foreclosing the mortgagor and ordering him to execute an absolute conveyance to the mortgagee is a conveyance on sale and therefore liable to stamp duty as such.<sup>14</sup>

Where an instrument is drawn in the form of a conveyance, though unnecessarily, it is liable to stamp duty as a conveyance on sale. For instance, a transfer by trustees of a trust property to a *cestui que trust* in pursuance of the trust-deed need not be made for a pecuniary consideration. But, if the parties think it fit to frame the

<sup>11</sup> Beng S M Vol. I p. 69. (Citing Board's Collection 8, file 167 of 1904—A and his two sons were co-partners in business. A wishing to retire, executed a deed in which, on the receipt of Rs. 50,000 he acknowledged that he had no more claims on his co-partners and released and assured in favour of his two sons his right, title and interest in the several businesses and in the properties purchased out of the Profits therefrom—Held that the deed is a conveyance chargeable with duty under Article 23.)

Also see Art. 55 Note 1.

11. ('93) 16 Mad 419 (421) (FB), *Reference under Stamp Act, S. 49.* (Deed called deed of settlement held not deed of gift—Case under Madras Regulation II of 1825.)

12. (1907) 2 KB 984 (990): 76 L J K B 1107: 97 L T 340, *Attorney General v. Felixstowe Gas Light Co.*

13. \*(1894) 1 Q B 507 (512): 70 L T 86: 42 WR (Eng) 211: 63 L J Q B 405.

14. (1896) 65 L J Q B 297 (299, 300): 74 L T 28: 44 WR (Eng) 300: (1896) 1 Q B 422, *Huntington v. Commissioners of Inland Revenue.*



instrument as a sale-deed for a money consideration, it is liable to stamp duty as a conveyance on sale.<sup>15</sup>

If an instrument is a conveyance on sale, the circumstance that it forms part of a larger transaction cannot affect the nature of the transaction.<sup>16</sup>

Where two or more items of property are sold for a certain sum of money and the value of each item is also mentioned in the instrument, the instrument is simply a deed of sale coming within the definition of conveyance.<sup>17</sup>

Where under an instrument a mortgagor relinquished his title to the mortgaged property in favour of the mortgagee in consideration of a certain sum besides the mortgage-money, it was held that the instrument was a conveyance on sale.<sup>1</sup>

**4. Conveyance for a term.**—Where, after the period prescribed for redemption, the mortgagor and the mortgagee agreed that the mortgagee should continue in absolute possession for a fixed term and then restore the property free from the mortgage lien, it was held that the agreement was distinct from the original mortgage and was a conveyance for a term of years.<sup>1</sup>

**5. "Property."**—The word "property" is not defined in this Act, nor was it defined in the Act of 1879. It was, however, defined in the Act of 1869 by cl. (26) of S. 3, the definition being "'property' means property being in British India." The expression "being in British India," was interpreted in the undermentioned case,<sup>1</sup> to mean being in British India *at the time of the making of the instrument*, so that an assignment of the next year's crop would not be an assignment of "property" under the Act. It is conceived that such assignment would be a "conveyance" under the present Act.

In another case<sup>2</sup> a doubt was expressed as to whether the definition would include property not in British India at the time of the execution of the document, but which might subsequently be brought or sent to British India; and it was held that a letter of assignment of a chose in action, the subject-matter of which was not in British India at the time the letter was signed and did not arrive into British India until about a year afterwards, did not require any stamp. The omission of this definition from the present Act removes any doubt as to such a letter being a conveyance.

The word "property" in its widest and most generic legal sense means the highest right a man can have to anything, being used for that right which one has to lands

15. ('84) 7 Mad 350 (351) (FB), *Reference under Indian Stamp Act*, S. 46.

Also see Art. 55 Note 6 and Art. 62 Note 8.

16. ('96) 20 Bom 432 (434, 435), (FB) *Reference under Stamp Act*, S. 46. (Old bank and new bank, by agreement, agreeing to transfer to new bank all properties of old bank—Deed of conveyance—Old bank transferring its immovable property to new bank to carry into effect previous agreement for consideration—*Held* deed was conveyance and liable to stamp duty as such although it formed part of previous agreement.)

17. ('73) 10 Bom H C R 354 (355) (FB), *In re Tukaram Hari Atre*. (The stamp duty leviable upon such instrument should be calculated upon the aggregate sum specified

therein and not upon the various items for which each property had been passed.)

Also see S. 5 Note 10.

18. ('91) 15 Bom 675 (677) (SB), *Sinapaya v. Shivapa*.

S2 (10)—NOTE 4

1. ('82) 6 Bom 674 (679) : 7 Ind Jur 96 (DB), *Gopal Sitaram v. Desai*.

S2 (10)—NOTE 5

1. ('77) 2 Cal 58 (87) : 1 Ind Jur 337 (DB), *Moran v. Mittu Bibee*. (Assignment as security for money advanced, of indigo to be manufactured is not mortgage of property "being in British India.")

Also see S. 2 (17) Note 1, S. 3 Note 18 and Art. 41 Note 2.

2. ('71) 8 Bom H C R (o c r) 169 (180) (DB), *Megji Hansraj v. Ramji Joita*.



or tenements, goods or chattels which does not depend on another's courtesy.<sup>3</sup> For the purposes of stamp law it has been defined as that which belongs to a person exclusive of others and which could be the subject of bargain and sale to another.<sup>4</sup>

A deed evidencing a transfer for consideration of the exclusive right of all the *kankar* under the land is a conveyance inasmuch as it transfers for consideration an exclusive right to property.<sup>5</sup>

But an indenture, by which a company purported to grant to a person the sole and exclusive right to carry on the business of asphalt-paving within two counties with the asphalt to be supplied by the company was held not to be a conveyance as no *property* was transferred thereby, the company having no monopoly as to asphalt-paving in the two counties and the instrument not being the transfer of any monopoly or exclusive right, though the instrument was described a grantor licence.<sup>6</sup>

Where a certified purchaser of property by an instrument purported to relinquish in favour of the real purchaser any *claims* he might have in respect of the property, it was held that the instrument was not a conveyance.<sup>7</sup>

The transfer of a *licence* is not a conveyance even when it involves the transfer of the deposit standing in the name of the transferor to that of the transferee.<sup>8</sup>

But the transfer of a decree by sale is a conveyance.<sup>9</sup> Similarly an instrument authorising a person to fell trees in the executant's tope for a consideration,<sup>10</sup> an instrument evidencing a transfer of patta land paying revenue to Government for a consideration,<sup>11</sup> and an instrument by which the right of vending toddy in a farm is transferred,<sup>12</sup> have all been held to be conveyances.

Property transferred may be either movable or immovable. "Movable property" is defined by sub-s. (34) of S. 3 of the General Clauses Act, 1897, which applies to this Act as meaning property of every description, except immovable property;

3. Wharton, *Law Lexicon*, 14th Edition, pages 809, 810.

[See also ('06) 33 Cal 425 (432) : 3 Cal L Jour 205 (DB), *Jaggewar Dutt v. Bhuban Mohan Mitra*. (The term "property comprised in a mortgage" in S. 85, T. P. Act, means not the physical object, but the interest therein, which the mortgagor is competent to transfer by way of mortgage at the date of the transaction.)

('91) 13 All 432 (473) (FB), *Mata Din v. Kazim Husain*. (Mahmood, J. Contra.)

(1894) 3 Ch 156 (157) : 63 L J Ch 836 : 71 L T 173 : 42 W R (Eng) 567, *In re Earanshaw*. (The expression "property" is not a term of ancient art. In Williams on Real Property there is a well reasoned explanation of the term "property" which shows that it is used in three senses, two of which are leading senses. "Property" may denote the thing to which a person stands in a certain relation and also the relation in which the person stands to the thing—Held that an advowson in gross though an incorporeal hereditament is free-hold property.)]

4. (1854) 10 Ex 147 (156, 157) : 156 E R 392 : 23 L J Ex 345 : 102 R R 511 : 2 W R (Eng) 561, *Potter v. Inland Revenue Commissioners*.

(1872) 20 W R (Eng) 610 (612) : 26 L T 633 : 7 Ex 211 : 41 L J Ex 106, *Limmer Asphalte Paving Co. v. Commissioners of Inland Revenue*. (*Potter v. Inland Revenue Commissioners*, (1854) 2 W R (Eng) 561 : 156 E R 392, followed.)

5. ('81) 1881 Pun Re No. 44 page 113 (114) (FB), *Scott v. Banna*.

6. ('1872) 20 W R (Eng) 610 (612) : 26 L T 633 : 7 Ex 211 : 41 L J Ex 106, *Limmer Asphalte Paving Co. v. Commissioners of Inland Revenue*.

7. ('02) 24 All 372 (374) : 1902 All W N 71 (FB), *Reference under S. 57 of Act II of 1899*.

8. ('33) Mad S M p. 96. (Citing, B.P. 23-R., Mis., 8th February 1932.)

9. ('33) Mad S M p. 91. (Citing, B. P. 1292, 9th May 1883.)

10. ('33) Mad S M p. 93. (Citing, B. P. 192-R., Mis., 28th January 1903.)

11. ('33) Mad S M p. 91. (Citing, B. P. 1576, 21st October 1880; and 1145, 23rd June 1881.)

12. ('33) Mad S M p. 92. (Citing, B. P. 636, 14th September 1889.)

Also see Art. 55 Note 1 and Art. 62 Note 2.



and "immovable property" is defined by sub-s. (25) of s. 3 of that Act as including land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. The term "immovable property" as used by the Indian Legislature is not, as observed by their Lordships of the Privy Council in *Maharana Fattehsingji v. Dessai*,<sup>13</sup> identical with "lands or houses"; it is used as something less technical than "real", and it comprehends all that would be real property according to English law and possibly more.

An agreement to purchase property subject to a mortgage has been held to come within the words "any equitable estate or interest in any property whatsoever" in S. 59 (1) of the English Stamp Act, 1891, and as such liable to stamp duty as a conveyance on sale.<sup>14</sup>

See also A. I. R. Commentaries on the Transfer of Property Act, 2nd (1945) Edn., S. 3, Notes 2 to 10, and S. 5 Note 5.

**6. Assignment of debt.**—An assignment or re-assignment of a debt is a conveyance within the meaning of this definition.<sup>1</sup> In *Nandubai v. Gau*<sup>2</sup> a debtor authorised his creditor to receive on his behalf a sum of money due to him by the Panjrapol authorities by a letter which was as follows: "I beg to apply that I have completely fulfilled the agreement to supply fodder and that the sum of Rs. 22 due to me on account should be made over on my behalf to Shet Mangaldas Bhanji. He will sign on my behalf, and I consent to his doing so." This letter was held to operate as an assignment of the debt to the creditor and to fall within the definition of conveyance. It is submitted that the decision is not correct. To effectuate an assignment of a debt there must be words of transfer in the instrument. This decision was dissented from by the Madras High Court in the undermentioned case<sup>3</sup> on the ground that in the absence of words of transfer, there cannot be an assignment of a debt.

A *book-debt* like any other debt, is property. An instrument transferring book-debts is, therefore, a conveyance.<sup>4</sup>

Transfers coming under Art. 62, Sch. I, will not be "conveyances," though they may be transfers of "debts." Because, this clause expressly excludes instruments otherwise specifically provided for in Sch. I.

**7. Sale of good-will of business.**—Lord Macnaughten observed in *Commissioners of Inland Revenue v. Muller & Co.'s Margarine Ltd.*<sup>1</sup>:

"Good-will is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a

13. ('74) 1 Ind App 34 (52): 13 Beng. L R. 254 (PC). (Case under Limitation Act of 1859.)

Also see S. 2 (16) Note 21.

14. (1898) 2 Q B 141 (145, 146): 67 L J QB 755: 79 L T 32, *Farmer and Co., Ltd. v. Inland Revenue Commissioners*.

S2 (10)—NOTE 6

1. ('33) Mad S M p. 94. (Citing, B. P. 1421, Mis., 8th November 1911.)

2. ('02) 27 Bom 150 (153): 4 Bom L R 951 (FB).

3. ('25) 12 AIR 1925 Mad 753 (756): 87 Ind Cas 382, *Doraisami Mudliar v. Doraisami Ayangar*.

4. (1900) 82 L T 689 (691, *Measures Bros. Ltd. v. Commissioners of Inland Revenue*. (1891) 7 TLR 610 (610), *Troup v. Commissioners of Inland Revenue*.

S2 (10)—NOTE 7

1. (1901) 1901 App Cas 217 (223, 224): 70 L J K B 677: 84 L T 729: 49 W R (Eng) 603. [(See also (1896) 1896 App. Cas 7 (17): 65 L J Ch. 1: 73 L T 514: 44 W R (Eng) 225, *Trego v. Hunt*. (Attracting customers to the business is a matter connected with the carrying on of it. It is the connexion thus formed, together with circumstances, whether of habit or otherwise which tend to make it permanent, that constitutes the good-will of a business.)]



business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

It is established by a long line of decisions that a good-will is property.<sup>2</sup> An assignment of the good-will of a business, together with the premises for a valuable consideration is liable to *ad valorem* duty on the whole amount of the consideration.<sup>3</sup>

Where an agreement in writing to sell the premises of a wholesale manufacturing business carried on abroad together with the good-will of the business for a lump sum was executed by the vendor abroad and by the purchaser in England, it was held that the good will was "property locally situate out of the United Kingdom" within the meaning of S. 59 (1) of the English Stamp Act, 1891, and that, therefore, the agreement was not chargeable with *ad valorem* duty.<sup>4</sup>

A good-will is capable of being sold independently of land.<sup>5</sup> Where it is so sold, the instrument by which it is sold will be liable to stamp duty as a conveyance on sale. Thus, in *West London Syndicate v. Commissioners of Inland Revenue*<sup>6</sup> by an agreement the vendor agreed to sell the good-will of the business of a hotel proprietor and the lease of the hotel for a lump sum. The landlord having refused his consent to the assignment of the lease, the vendor executed a declaration of trust of the lease-hold premises in favour of the purchasers as provided by the agreement. It was held that the good-will being capable of being sold independently of the lease, the agreement was liable to stamp duty as a conveyance on sale in respect of the value of the good-will.

See also the undermentioned cases.<sup>7</sup>

**8. Trade-mark, patent, etc.**—A trade-mark like a good-will is property and as such an agreement to sell a trade-mark is liable to *ad valorem* stamp duty as a conveyance on sale.<sup>1</sup>

2. (1896) 2 Q B 356 (359): 65 L J Q B 657: 14 W R (Eng) 670, *Benjamin Brooke & Co. v. Commissioners of Inland Revenue*.

(1901) 1901 App Cas 217 (223): 84 L T 729: 49 W R (Eng) 603: 70 L J K B 677, *Commissioners of Inland Revenue v. Muller & Co's. Margarine Ltd.*

(1898) 2 Q B 507 (513): 79 L T 289: 47 W R (Eng) 125: 67 L J Q B 956, *West London Syndicate v. Commissioners of Inland Revenue*.

\*(1854) 10 Ex 147 (159): 23 L J Ex 345: 156 E R 392: 2 W R (Eng) 561: 102 R R 511, *Potter v. Commissioners of Inland Revenue*.

3.\* (1854) 10 Ex 147 (159): 23 L J Ex 345: 2 W R (Eng) 561: 156 E R 392: 102 R R 511, *Potter v. Commissioners of Inland Revenue*.

4. (1901) 1901 App Cas 217 (225): 84 L T 729: 49 W R (Eng) 603: 70 L J K B 677, *Commissioners of Inland Rev. v. Muller & Co's. Margarine Ltd.* (The Earl of Halsbury L. C. dissenting—(1900) 1 Q B 310 affirmed.)

5. (1754) 10 Ex 147 (159): 23 L J Ex 345: 156 E R 392: 2 W R (Eng) 561: 102 R R 511, *Potter v. Commissioners of Inland Revenue*.

(1898) 2 Q B 507 (513): 67 L J Q B 956: 47 W R (Eng) 125: 79 L T 289, *West London Syndicate v. Commissioners of Inland Revenue*.

6. (1898) 2 Q B 507 (513, 523): 67 L J Q B 956: 79 L T 289: 47 W R (Eng) 125.

7. ('96) 23 Cal 283 (288) (FB), *Reference under Stamp Act, 1879*. (When by one and the same deed there is a conveyance of freehold land and good-will and a transfer of interests secured by leases, the deed should be stamped under Art. 21 of the Act of 1879, with an *ad valorem* duty on the conveyance of the freehold property, good-will, buildings and erections, and under Art. 60 with a duty of Rs. 5 on the transfer of each of the interests secured by the leases.)

(1883) 52 L J Ch 537 (539): 49 L T 345: 31 W R (Eng) 477, *Arundell v. Bell*. (As a general rule, and in the absence of express contract, there is not, in a partnership between solicitors, any partnership asset which is capable of being sold or valued as the "good-will" of the partnership business.)

S2 (10)—NOTE 8

1. (1896) 2 Q B 356 (359): 14 W R (Eng) 670: 65 L J Q B 657, *Benjamin Brooke & Co. Ltd. v. Commissioners of Inland Revenue*.



So also, a share in a patent and a sole licence to use in a particular area the invention protected by the patent are property and an agreement for the sale of such a share or licence is, therefore, liable to stamp duty as a conveyance on sale.<sup>2</sup>

**9. Assignment of contracts.**—An assignment of the benefit of a contract is an assignment of a chose in action; and a chose in action being property, an instrument assigning the benefit of a contract amounts to a conveyance within the meaning of this clause. Thus, where the benefit of a contract was assigned to the plaintiff with the following endorsement, "I have sold the whole of my right and interest in this contract and in the goods mentioned therein to the plaintiff," it was held that the document was the assignment of a chose in action and therefore must be stamped as a conveyance.<sup>1</sup> Similarly, where by an agreement made in England the benefit of a contract entered into abroad was sold to an English company, it was held that the benefit of the contract was property and that an *ad valorem* duty was payable on the agreement as a conveyance on sale.<sup>2</sup> So also, an agreement made in England for the sale of a licence to use an Australian patent, *i.e.*, of the benefit of a contract, was held to be a conveyance on sale and chargeable with stamp duty accordingly.<sup>3</sup>

**10. Family arrangement.**—The question whether a deed of family arrangement amounts to a conveyance on sale depends on the nature of the deed itself. In *Marquess of Bristol v. Commissioners of Inland Revenue*<sup>1</sup> Kennedy, J., observed as follows:

"There may be things which are clearly not conveyances on sale and yet are family arrangements which involve certain considerations of money's worth being dealt with in the transaction, but as to which it could not correctly be said that there has been a conveyance on sale; but it seems to me to be equally clear that there may be things which are in a sense family arrangements, but which also involve and are, so far as the documents are concerned, conveyances on sale. If the method or machinery adopted is really a conveyance on sale—a sale for money—it matters not that the ultimate purpose of the parties in making use of this machinery may be of an indirect nature—not necessarily involving a money gain to the one side or to the other. There may not be a bargaining for the purpose of making profit, in the sense of money profit, but none the less it appears to me that, if there is a conveyance of property and money given for it, it matters not whether or not it is entered into by the one party or the other because it will facilitate the maintenance of good relations between the parties, or help, it may be, the buyer to preserve intact an estate in which he has, either from affection or from the prospect of inheritance, a special interest."

In that case, by two deeds made between B and H (who was the heir of B's settled estates) after reciting that H had undertaken the payment of the mortgages on the estate and that B was indebted to H in certain sums, it was witnessed that in pursuance of a family arrangement B conveyed to H his unsettled estates subject to the mortgages, and also certain specified chattels; but power was reserved to B and

2. (1897) 1 Q B 175 (180, 181, 182): 66 L J Q B 137: 75 L T 534: 45 W R (Eng) 203, *Smelting Company of Australia v. Commissioners of Inland Revenue*.

S2 (10)—NOTE 9

1. ('07) 9 Bom L R 119 (121, 122), *Nathu v. Hansraj*.

2. (1901) 1 K B 245 (250, 257, 259): 70 L J K B 211: 84 L T 101, *Danubian Sugar Factories*

*v. Commissioners of Inland Revenue*.

3. (1897) 1 Q B 175 (180, 181): 66 L J Q B 137: 75 L T 534: 45 W R (Eng) 203, *Smelting Company of Australia v. Commissioners of Inland Revenue*.

S2 (10)—NOTE 10

1. (1901) 2 K B 336 (339, 340): 70 L J K B 759: 84 L T 659: 49 W R (Eng) 718.



H to cancel, alter or make void the family arrangement at any time. It was held that the deeds were conveyances on sale and that the cancellation clause did not mean that there was not to be a real conveyance on sale or one which was not intended to be binding, but that the family arrangement might be varied at any time.

On the other hand, where a father by a deed conveyed certain property to his son in consideration of natural love and affection, as also in consideration of the provision which the son had made of £1500 in augmentation of the fortunes of his sisters, it was held that the deed was not a conveyance on sale, inasmuch as, though the son, paying money for the property, might be considered a purchaser, the father could not be considered a seller, no benefit having accrued to him.<sup>2</sup>

Similarly, where by a marriage settlement the defendant, in consideration of £4000 paid by the father of the intended wife as a marriage portion, and in consideration of the marriage, covenanted to pay an annuity of £800 a year to the plaintiff, to the use of the intended husband and wife, during their joint lives, it was held that the deed did not require *ad valorem* stamp duty as upon the sale of an annuity.<sup>3</sup>

It was held by the High Court of Calcutta, in a case arising under the Stamp Act of 1879, that a deed of family arrangement by which one brother conveyed a *par-gana* and a sum of money to his younger brother, in consideration of the latter releasing certain family property on which he had claims, was not a conveyance as it was not a transfer on sale.<sup>4</sup> Such a deed will, however, be a conveyance under the present definition as seen in Note 1.

**11. Company cases.**—By a deed of “apport” executed in France, property in France was transferred by one English company to another English company, the consideration for the transfer being shares of the latter company which were to be issued and delivered to the former company in England. It was held that the instrument was a conveyance on sale.<sup>1</sup>

The share-holders of the A company, which was then in the course of being voluntarily wound up, entered into an agreement in writing with the B company whereby it was agreed that the share-holders of the A company should respectively exchange their shares in the A company for shares in the B company, and that upon the B company allotting to them the shares to which they were respectively entitled they should thenceforth hold their respective shares in the A company in trust for the B company. It was held that the agreement amounted to a declaration of trust and as such to a conveyance on sale to the B company of an equitable interest in the shares of the A company within the meaning of S. 54 of the English Stamp Act, 1891.<sup>2</sup>

The consideration for the transfer of the whole undertaking of one railway company to another railway company consisted of the purchasing company taking on itself the liabilities of the vendors, and creating and allotting to the share-holders of the selling company preference stock of the purchasing company. It was held that

2. (1825) 107 E R 1049 (1050): 3 L J K B (O S) 211, *Denn d. Manifold v. Diamond*.

3. (1837) 132 E R 494 (495): 6 L J C P 185, *Massy v. John Nanney*. (*Denn d. Manifold v. Diamond*, (1825) 107 E R 1049, applied.)

4. ('81) 7 Cal 21 (23) (FB), *In the matter of the Maharajah of Durbhunga*.

S2 (10)—NOTE 11

1. (1908) 1908 App Cas 22 (25, 26): 77 L J K B 55: 97 L T 814, *Commissioners of Inland Revenue v. Maple & Co.*

2. (1899) 2 Q B 7 (12, 13): 68 L J Q B 204: 79 L T 559: 47 W R (Eng) 320, *Chesterfield Brewery Co. v. Commissioners of Inland Revenue*.



the deed which evidenced the above transaction was a conveyance on sale.<sup>3</sup>

By an agreement between the old bank and its liquidators and the new bank, it was agreed that the former should transfer all its property and effects to the new bank, the consideration being that the new bank should discharge all debts and liabilities of the old bank, and that every member of the old bank should, in respect of each share held by him in the old bank, be entitled to claim an allotment of one share of equal value in the new bank. By a deed executed to carry into effect the said agreement, the old company and its liquidators transferred its immovable property to the new company at an agreed value. It was held that the deed was a conveyance on sale.<sup>4</sup>

A conveyance to the company, of property which is the property of the share-holders in their individual capacity, is just as much a conveyance as if the share-holders were totally different persons.<sup>5</sup> Thus, where eight persons, the owners of a tea estate, purported to convey their rights in the estate to a company, the consideration expressed in the deed being payable in shares and debentures of the company and the only share-holders and debenture-holders were these eight persons, it was held that the deed was a conveyance on sale and as such *ad valorem* duty was payable thereon.<sup>6</sup>

A share is property in the hands of a share-holder, and when a share-holder exchanges his shares with another the transaction may amount to a transfer by way of exchange or conveyance.<sup>7</sup> Thus where, by an instrument entered into in pursuance of an agreement a share-holder in one company transfers his shares to another company in exchange for certain shares in the latter company it has been held in the undermentioned English decisions<sup>8</sup> that the transaction will amount to a conveyance on sale of the shares. (Under this Act the transaction may amount to an exchange. See Art. 31 Note 2.)

But when the company is for the first time issuing shares there is no question of property already possessed by the company being thereby transferred to the allottee.<sup>9</sup> Where therefore a company for the first time issues shares the allotment of shares cannot amount to a conveyance within the meaning of this clause. Thus where two companies orally agreed to allot some of their shares, fully paid up, to each other otherwise than in cash, and the substance of the agreement was embodied in resolutions recorded in the books of both the companies and a statement embodying the particulars of the above agreement was filed in the form prescribed before the Registrar under S. 104 of the Companies Act, it was held that the contract of which the particulars were recorded in the prescribed form did not amount to a conveyance as there was no transfer of property.<sup>10</sup>

3. (1864) 33 L J Ex 173 (176) : 10 L T 161 : 13 W R (Eng) 10, *Furness Railway Co. v. Commissioners of Inland Revenue*.

4. ('96) 20 Bom 432 (434, 435) (FB), *Reference under the Stamp Act, Section 46*.

5. ('86) 13 Cal 43 (46) : 11 Ind Jur 22 (FB), *In re The Kondoli Tea Co. Ltd.*

6. (1894) 1 Q B 516 (529) : 63 L J Q B 173 : 69 L T 817 : 42 W R (Eng) 259, (*John*) *Foster & Sons. v. Commissioners of Inland Revenue*.

(('86) 13 Cal 43 (46) : 11 Ind Jur 22 (FB), *In re The Kondoli Tea Co. Ltd.*

7. ('37) 24 AIR 1937 Mad 259 (260) : I L R (1937) Mad 559 : 167 Ind Cas 513 (FB),

*Board of Revenue Triplicane, Madras v. Madura Mills Company Ltd.*

8. (1897) 2 Q B 423 (426) : 66 L J B 732 : 46 W R (Eng) 1 : 77 L T 270, *Coats Ltd. v. Inland Revn. Commrs.*

(1897) 1 Q B 778 (784), *J. & P. Coats Ltd. v. Inland Revenue Commissioners*.

9. ('37) 24 AIR 1937 Mad 259 (261) : ILR (1937) Mad 559 : 176 Ind Cas 513 (FB), *Board of Revenue Triplicane, Madras v. Madura Mills Company Ltd.*

10. ('37) 24 AIR 1937 Mad 259 (261) : ILR (1937) Mad 599 : 176 Ind Cas 513 (FB), *Board of Revenue Triplicane, Madras v. Madura Mills Company, Ltd.*



See also the undermentioned cases<sup>11</sup> and Notes 3 and 12.

**12. Agreement to convey.**—A mere agreement to transfer property *in future* is not a conveyance.<sup>1</sup>

Sub-section (1), cl. (b) of S. 104 of the Companies Act, 1913, requires that in the case of shares allotted as fully or partly paid up, otherwise than in cash, the contract in writing "constituting the title of the allottee" shall be filed with the Registrar. Sub-section (2) of that section lays down that where such contract is not reduced to writing, the company must file the prescribed particulars thereof and the prescribed particulars so supplied have to be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing. Where, therefore, a contract of which the particulars are supplied as required by sub-section (2) consists merely of an agreement for the allotment of shares in future, there being no transfer of property *in praesenti*, the particulars cannot be treated as a conveyance within the meaning of this clause.<sup>2</sup>

Thus, in *Bhola Ram & Sons, Ltd. v. Emperor*<sup>3</sup> the shares of a company were allotted to the partners of a firm in consideration of an oral agreement on behalf of the firm to transfer its business, assets, etc., to the company. After the allotment the company filed with the Registrar under S. 104, Companies Act, a return as to the allotment of the shares. It was held that the particulars could not be treated

<sup>11</sup>. (1911) 1911 App Cas 439 (448) 80 L J P C 130 : 104 L T 755, *Commissioner for Stamp Duties v. Broken Hill South Extended Ltd.* (Reconstitution of company—Property of predecessor company to be transferred to new company in lieu of shares in new company—Mode of assessing value of consideration—Market-value of shares to be considered.) ('71) 16 Suth W R 208 (210) (FB), *Reference to the High Court by the Board of Revenue.* (No *ad valorem* stamp duty is payable under Stamp Act of 1869 upon a conveyance where the consideration consists of shares in a public company made over to the vendor.) ('34) 21 AIR 1934 Lah 533 (534) : 15 Lah 509 : 150 Ind Cas 790 (SB), *Laxmi Iron and Steel Manufacturing Company v. Emperor.* (Where 200 shares had been allotted in consideration of a written agreement as regards the transfer of a business and the company submitted a return as to allotment in Form No. 6 of the Companies Act, accompanied by the agreement which formed the consideration for the allotment of the 200 shares, it was held that the agreement was not a conveyance, that it was liable to a stamp duty of Re. 1 only and the fact that the agreement was in writing was immaterial AIR 1934 Lah 530 : 15 Lah 501 (SB) followed.) ('34) 21 AIR 1934 Lah 530 (532) : 15 Lah 501 : 150 Ind Cas 781 (SB), *Bholaram and sons Ltd. v. Emperor.* (Per Bhide, J.—S. 104, Companies Act, requires the particulars of the contract constituting the title of the allottee to be filed with the Registrar. If this contract consists merely of an agreement to transfer properties in the future, the particulars thereof cannot be treated as a transfer of property *in praesenti*. Sub-section

(2) of S. 104 clearly lays down that the particulars would be liable to the same stamp duty as would have been payable if the contract of which the particulars are supplied had been reduced to writing. The particulars cannot be treated as a conveyance where the contract of which the particulars are supplied is only an agreement to transfer property in future.)

('32) 19 AIR 1932 All 291 (293) : 137 Ind Cas 337 (SB), *In re Corporation of Swadeshi Cotton Mills Company, Ltd.* (There is nothing in the provisions of S. 104, Companies Act 1913, which requires that a duty payable on a conveyance should be levied on an agreement for the allotment of shares by a company in future.)

#### S2 (10)—NOTE 12

1. ('37) 24 AIR 1937 Mad 259 (260) : ILR (1937) Mad 559 : 167 Ind Cas 513 (FB), *Board of Revenue Triplicane, Madras v. Madura Mills Company, Ltd.*

('34) 21 AIR 1934 Lah 530 (532) : 15 Lah 501 : 150 Ind Cas 781 (SB), *Bholaram and Sons Ltd. v. Emperor.*

2.\*('34) 21 AIR 1934 Lah 530 (532) : 15 Lah 501 : 150 I. C. 781 (SB), *Bhola Ram and Sons v. Emperor.*

('32) 19 AIR 1932 All 291 (293) : 137 Ind Cas 337 (SB), *In re Incorporation of Swadeshi Cotton Mills Company, Ltd.* (There is nothing in the provisions of S. 104, Companies Act, which requires that a duty payable on a conveyance should be levied on an agreement for the allotment of shares by a company in future.)

3.\*('34) 21 AIR 1934 Lah 530 (532) : 15 Lah 501 : 150 Ind Cas 781 (SB).



as a conveyance as the contract of which the particulars were supplied was only an agreement to transfer property in future.

Similarly, where two companies orally agreed to allot some of their shares to each other and the substance of the agreement was embodied in resolutions recorded in the books of both the companies, and a statement embodying the particulars of the above agreement was filed before the Registrar, it was held that the contract of which the particulars were filed did not amount to a conveyance, but was a mere agreement.<sup>4</sup>

In the above cases the agreements in pursuance of which the shares were allotted were oral. However, the fact that an agreement is in writing will not make any difference and the agreement cannot be treated as a conveyance.<sup>5</sup>

Where an agreement to sell contemplates a deed of sale to be executed to complete the transaction, the agreement cannot amount to a conveyance.<sup>6</sup>

Thus, in the undermentioned case<sup>7</sup> the vendor company entered into an agreement to sell all its business undertakings and assets including good-will, freehold hereditaments, etc. The agreement recited that the purchase shall be completed on such date as shall be mutually arranged. A sale-deed was afterwards executed by the vendor in respect of the immovable property but no deed of transfer was executed as regards the good-will and movable property. It was held that the agreement did not amount to a conveyance but was a mere contract which was to be subsequently completed.

In such cases as the above, if, after entering into a contract to sell, the parties, inspite of the risk that either party may resile from the contract, refrain from getting an actual deed of conveyance prepared, they can successfully evade the payment of stamp duty payable on a conveyance.<sup>8</sup> In this connection, Lord Esher, M. R., in *Commissioners of Inland Revenue v. Angus*<sup>9</sup> observed as follows :

“But it is said that if the appeal be decided against the Commissioners purchasers will rest satisfied with an agreement of which specific performance will be decreed, and will not go on to execute a conveyance, and so the Crown will lose the stamp duty, and it is rather suggested that this would be cheating

4. ('37) 24 A I R 1937 Mad 259 (261) : I L R (1937) Mad 559 : 176 Ind Cas 513 (FB), *Board of Revenue Triplicane, Madras v. Madura Mills Company, Ltd.*

5. ('34) 21 A I R 1934 Lah 533 (534) : 15 Lah 509 : 150 Ind Cas 790 (SB), *Lakshmi Iron and Steel Manufacturing Co. v. Emperor.*

6.† ('32) 19 A I R 1932 All 291 (293) : 137 Ind Cas 337 (SB), *In re Incorporation of Swadeshi Cotton Mills Company Ltd.*

('39) 1939 Nag L Jour 37 (38) (Rev.), *In re Ishwardas.* (Even though possession was also delivered.)

('31) 18 A I R 1931 Rang 193 (194) : 131 Ind Cas 503. *Thin Za Ma v. Veera Kalai.* (Do.)

('90) 14 Bom 316 (317) (SB), *Heptula Shekh Adaman Co. v. Esafali Abdulali.* (A document where by the party executing it purported to sell his right, title and interest in certain receipts for shares and to execute in future, a packa document of sale thereof, and acknowledged the receipt of Rs. 10001 was held to be an agreement.)

[But see ('42) 29 A I R 1942 Pesh 43 (44) : 201 Ind Cas 165, *Fazal Karim v. Mohd. Karim.* (An endorsement on back of sale deed showing that the property had been transferred by the vendee in favour of a pre-emptor was held to amount to conveyance although a formal deed of sale was executed afterwards.)

('33) Mad S M p. 93. (Citing, B. Ps. 1550-R. Mis., 28th July, 1904 : 1423-R., Mis., 23rd July, 1906—Document called an agreement for sale and containing terms of sale—Possession given—Provision for execution of “proper assurance”—Held that document was a conveyance.)]

7. ('32) 19 A I R 1932 All 291 (293) : 137 Ind Cas 337 (SB), *In re Incorporation of Swadeshi Mills Company Ltd.*

8. ('32) 19 A I R 1932 All 291 (292) : 137 Ind Cas 337 (SB), *In re Incorporation of Swadeshi Cotton Mills Company, Ltd.*

9.\*(1889) 23 Q B D 579 (593) : 61 L T 832 : 38 W R (Eng) 3.



the Crown and committing a fraud. The Crown, however, must make out its right to the duty, and if there be a means of evading the stamp duty, so much the better for those who can evade it. It is no fraud upon the Crown, it is a thing which they are perfectly entitled to do. The Crown cannot have the stamp duty unless the parties to the sale choose to effectuate the transaction by an instrument which of itself conveys the property, and, if they choose to be satisfied with something less, the matter is not brought within S. 70" (of the English Stamp Act, 1870).

Where a paper signed by the defendants stated that the plaintiffs *agreed* to sell to the defendants certain beds of coal at a certain price, and it was contended that as no further instrument appeared to have been contemplated, the transaction amounted to a sale, it was held that the instrument was not a conveyance and did not require stamp duty as such.<sup>10</sup> But in the undermentioned case<sup>11</sup> an agreement was held to be a conveyance on sale of an equitable interest on the ground that the real intention of the parties was that the agreement should be the only document of title and that it should not be followed by a legal transfer.

An agreement for the sale of good-will of a business, the effect of which in equity, as between the vendor and purchaser, is to make the purchaser the owner, and of which a Court of Equity would decree specific performance, in the event of the vendor not fulfilling his contract is not a conveyance on sale, but only an agreement.<sup>12</sup>

The following are further examples of instruments which were held to be mere agreements and not conveyances :

(1) By an agreement the conservators of the Thames agreed to grant permission during their pleasure to a company to construct and retain a jetty in consideration of an annual payment yearly so long as the jetty was allowed by the conservators to remain. The instrument was held to be an agreement and not a conveyance on sale.<sup>13</sup>

(2) A document stated, "I have sold to you the standing trees of the two villages for Rs. 1601 on condition that those young trees whose trunks do not exceed two feet in circumference, should not be cut by you and that I will give you further information to cut the trees and remove them within two years." Candy, J., held that the document was not a conveyance but an agreement. Farran, C. J., and Parsons, J., while holding that the document was not a conveyance, did not express any opinion as to whether it was an agreement.<sup>14</sup>

(3) An agreement to hire machinery with an option on the part of the hirer to purchase was held to be an agreement and not a conveyance.<sup>15</sup>

13. Hire purchase agreement.—See Note 12 and Art. 5 Note 3.

10. (1844) 13 L J Ex 212 (213) : 67 R R 468 : 3 L T (os) 39 : 152 E R 1397, *Phillips v. Morrison*.

11. (1899) 2 Q B 7 (13) : 79 L T 559 : 47 W R (Eng) 320 : 68 L J Q B 204, *Chesterfield Brewery Co. v. Commissioners of Inland Revenue*.

12. (1889) 23 Q B D 579 (593, 594) : 61 L T 832 : 38 W R (Eng) 3, *Commissioners, Inland Revenue v. Angus*.

13. (1886) 18 Q B D 279 (283, 285) : 56 L J Q B 181 : 56 L T 198 : 35 W R (Eng) 274, *Conservators of River Thames v. Commissioners, Inland Revenue*.

14. ('98) 22 Bom 785 (788) (FB), *Vohra Mohammadali and Co. v. Ramchandra*.

15. ('17) 4 A I R 1917 Cal 71 (77) : 44 Cal 72 : 37 Ind Cas 175 (SB), *In re Linotype and Machinery Co. and Windsor Press*. Also see Art. 5 Note 3.



**14. There must be an instrument of conveyance.**—As has been seen in Note 26 on Preamble, the stamp duty is payable on an instrument and not on the transaction which is embodied in the instrument.<sup>1</sup> Where, therefore, a transfer is effected without executing a deed of conveyance, the transfer is not liable to stamp duty. In this connection, Lord Esher, M. R. in *Commissioners of Inland Revenue v. Angus*<sup>2</sup> observed as follows :

“The first thing to be noticed is, that the thing which is made liable to the duty is an “instrument.” If a contract of purchase and sale, or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument, the case is not within the section, (S. 70 of the English Stamp Act of 1870) and no tax is imposed. It is not the transaction of purchase and sale which is struck at; it is the instrument whereby the purchase and sale are effected which is struck at. And if any one carry through a purchase and sale without an instrument, then, the legislature have not reached that transaction.”

**15. Instrument of conveyance failing to operate as such.**—Where an instrument of conveyance fails for some reason to operate as such, the instrument is not liable to be stamped as a conveyance. In such a case, the question as to what is the appropriate stamp for such an instrument will depend on the legal effect of the instrument itself. Thus, where an instrument of conveyance of land could not operate as such, not being a deed under seal, but it contained a stipulation not to disturb the party intended to take the premises, in the enjoyment of them it was held that the instrument operated as an agreement and was liable to stamp duty as such.<sup>1</sup>

**16. Instrument merely recording oral transaction.**—An instrument by which property is not actually transferred but which is a mere record of a prior oral transfer is not a conveyance within the meaning of this clause.<sup>1</sup>

A retiring partner of a firm might, instead of assigning his interest, take the amount due to him from the firm and acknowledge that he has no more claims on his co-partners. This might be done without any deed at all and a deed might afterwards be drawn which would merely record the transaction. Such deed would not require stamp duty as on a conveyance.<sup>2</sup>

**17. Certificate of sale.**—The Stamp Act of 1869 did not contain a specific provision making a certificate of sale liable to stamp duty. A certificate of sale under S. 259 of the Code of Civil Procedure, 1859, had, however, by virtue of the express provisions of that section the effect of an instrument of conveyance and was therefore chargeable with stamp duty as such.<sup>1</sup> In the absence of such provision in the Madras Rent Recovery Act, VIII of 1865, it was held that a certificate of sale issued under Ss. 35 and 40 of that Act was not a conveyance and was therefore exempt from stamp duty.<sup>2</sup> In the present Act, Art. 18 of the Schedule makes a

## S2 (10)—NOTE 14

1. (1900) 1 Q B 310 (319), *Muller & Co.'s Margarine Ltd. v. Commissioners, Inland Revenue*. (What the Stamp Act deals with is not the bargain which arises out of the consent of the parties, but the instrument which records that bargain.)

2. (1889) 23 Q B D 579 (589) : 61 L T 832 : 38 W R (Eng) 3.

Also see Preamble Note 26.

## S2 (10)—NOTE 15

1. (1827) 108 E R 596 (597) 5 L J (os) M C 67, *Rex v. Ridgwell*.

## S2 (10)—NOTE 16

1. ('41) 43 Pun L R 294 (295, 296), *Parshotam Das v. Emperor*.
2. (1899) 81 L T 633 (637) : 48 W R (Eng) 303, *Garnett v. Inland Revenue Commissioners*.

## S2 (10)—NOTE 17

1. ('74) 8 Mad H C R 112 (113) (FB), *Case referred by the Board of Revenue No. 2 of 1875*. Also see Art. 18 Note 1.
2. ('74) 8 Mad H C R 112 (113) (FB), *Case referred by the Board of Revenue No. 2 of 1875*.



specific provision for the payment of stamp duty on a certificate of sale. It is, therefore, an instrument which is "otherwise specifically provided for by Sch. I" and does not fall within the definition of conveyance.

**18. Covenants.**—A covenant is an agreement by deed in writing by which either of the parties pledges himself to the other that something is either done or shall be done, or stipulates for the truth of certain facts.<sup>1</sup> A covenant may be entered into for value to abstain from doing a particular act or class of acts in respect of property; but it will not amount to a sale.<sup>2</sup> The reason is that there is no transfer of property which continues to be the property of the covenantor.<sup>3</sup>

Thus, a railway company gave notice under S. 78 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict., C. 20), to a colliery company not to work certain coal under and adjacent to their railway. The railway company also expressed their willingness to make compensation therefor. The amount of the compensation having been fixed, and paid by the railway company, the colliery company executed an instrument acknowledging receipt of the amount in satisfaction of all claims in respect of the coal and undertaking to leave the coal unworked. It was held that the instrument was not a conveyance on sale.<sup>4</sup>

Where a covenant is merely incidental or accessory to a conveyance, no additional duty is payable in respect of the covenant. Thus, where the shares of a joint stock company were made transferable subject to a covenant by the transferee to observe the regulations of the company and a transferee from a shareholder covenanted accordingly, it was held that the covenant was not liable to additional duty as a covenant.<sup>5</sup>

Similarly, in the undermentioned case<sup>6</sup> a company, by an indenture granted to H the sole and exclusive right to carry on, with the asphalt to be supplied by them, the business of asphalt-paving within two counties and not elsewhere, for which H was to pay them a sum of £7000, £1500 upon the execution of the indenture and the remainder by six equal monthly instalments. It was held that, assuming that the instrument was a conveyance, the covenant to pay the balance of the purchase-money was a direct accessory to the main object of the instrument and that, therefore the instrument was not liable to an additional duty.

In the same way, an instrument of conveyance containing words which express the usual covenants for title is not liable to pay additional duty in respect of those covenants.<sup>7</sup>

**19. Transfer of share in partnership business.**—Where a partner, on dissolution of partnership, transfers, by an instrument, his share in the partnership to a stranger

#### S2 (10)—NOTE 18

1. Wharton: *Law Lexicon*, 14th Edition, Page 277.

2. (1901) 1 K B 416 (429): 70 L J K B 336: 84 L T 183: 49 W R (Eng) 261, *Great Northern Railway Co. v. Commissioners of Inland Revenue*.

3. (1901) 1 K B 416 (429): 70 L J K B 336: 84 L T 183: 49 W R (Eng) 261, *Great Northern Railway Co. v. Commissioners of Inland Revenue*.

4. (1899) 2 Q B 652 (657, 659, 660), *Great Northern Railway Co. v. Commissioners, Inland Revenue*.

(1901) 1 K B 416 (427, 429): 70 L J K B 336: 84 L T 183: 49 W R (Eng) 261, *Great Northern Railway Co. v. Commissioners of Inland Revenue*. (1899) 2 Q B 652 affirmed.)

5. (1841) 2 Q B 321 (324): 11 L J Q B 9: 114 E R 126, *Wolseley v. Cox*.

Also see S. 5 Note 5.

6. (1872) 20 W R (Eng) 610 (613): 7 Ex 211: 26 L T 633: 41 L J Ex 106, *Limmer Asphalt Paving Co. v. Commissioners of Inland Revenue*.

7. ('78) 1 Mad 133 (133): 1 Ind Jur 128 (SB), Case No. 1 of 1876.

Also see S. 2 (5) Note 12, S. 5 Note 5 and Art. 34 Note 3.



with whom the continuing partner might be disposed to enter into partnership, the instrument will amount to a conveyance on sale. It will not the less be a conveyance on sale because the transfer is not to a stranger but to the continuing partner.<sup>1</sup> Similarly, there is no distinction with respect to liability to stamp duty between a case where the retiring partner without taking any account sells his share for a sum named and a case where his share is ascertained.<sup>2</sup>

In *Christie v. Commissioners of Inland Revenue*<sup>3</sup> by an indenture, which recited a previous agreement between two partners by which the partnership was dissolved and the share due to the retiring partner ascertained and partly paid in cash and partly secured by a mortgage and by assignment of policies of insurance, the retiring partner "in pursuance of the agreement and in consideration of the premises" conveyed to the remaining partner all his estate or interest in the partnership property and assets. It was held that the indenture was liable to *ad valorem* stamp duty as a conveyance on sale. This case was followed in the undermentioned case<sup>4</sup> in which the consideration for transfer was expressed to be part of the partnership assets.

On the dissolution of partnership between A and B a deed was executed to give effect to the dissolution. It recited that a certain amount was standing to the credit of A, that B had given A his promissory note for that amount, that by an indenture the real estate of the partnership had been conveyed to B and that the chattel property of the partnership was in the possession of B. By the deed, both A and B declared the partnership dissolved and A declared that the delivery of the note to him was accepted by him in full discharge of all claims against B in the partnership. It was held that the instrument did not merely record an oral conveyance but itself was a conveyance on sale and as such was liable to *ad valorem* duty.<sup>5</sup>

As has been seen in Note 3, where a transaction is in substance a sale of a share in a partnership, and the transfer of a share in a lease only forms part of such sale, as being a part of the partnership assets, the transaction is a sale of the share in the partnership, and the duty is payable as on a conveyance on sale and not as a transfer of the lease.<sup>6</sup>

**\*(11) "duly stamped,"** as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in <sup>a</sup>[the provinces]:

a. Substituted for "British India" by I. O.

\*[1879—S. 3 (10).]

S2 (10)—NOTE 19

1. (1867) 2 Ex 46 (50): 36 L J Ex 11: 15 L T 282: 15 W R (Eng) 258, *Christie v. Commissioner's of Inland Revenue*.

('08) 32 Bom 505 (508): 10 Bom L R 730 (FB), *In the matter of Hiralal Navalram*.

[See ('40) Bihar S M p. 154, (Citing, Board's Collection 8, File 167 of 1904—A and his two sons were co-partners in business. A, wishing to retire, executed a deed in which, on the receipt of Rs. 50,000, he acknowledged that he had no more claims on his co-partners and released and assured in favour of his two sons his right, title and interest in the several businesses and in the properties purchased out of the profits therefrom, Held that the deed was a conveyance.)

('31) Beng S M Vol. I, page 69.]

2. (1867) 2 Ex 46 (53): 36 L J Ex 11: 15 L T 282: 15 W R (Eng) 258, *Christie v. Commrs. of Inland Rev.*

3. (1867) 2 Ex 46 (50): 36 L J Ex 11: 15 L T 282: 15 W R (Eng) 258.

4. (1867) 2 Ex 399 (400): 36 L J Ex 199: 16 L T 839, *Phillips v. Commissioners, Inland Revenue*.

5. (1899) 81 L T 633 (637): 48 W R (Eng) 303, *Garnett v. Commissioners of Inland Revenue*.

6. ('86) 12 Cal 383, (388) (FB), *In re Menglas Tea Estate*.

Also see Note 3.



## Provincial Amendment.

## EAST BENGAL

The text of the East Bengal Act IX of 1949 is as follows :—

1. (1) This Act may be called the Indian Stamp (East Bengal Amendment) Act, 1949.

(2) It extends to the whole of East Bengal.

(3) It shall come into force on the date of its publication in the official Gazette <sup>a</sup>.

(4) It shall remain in force for a period of one year only.

2. In this Act unless there is anything repugnant in the subject or context,—

(a) 'Registering Officer' means the officer who registers instruments under the provisions of the Indian Registration Act, 1908.

(b) 'Collecting Government,' 'instrument' and 'impressed stamp' shall have the same meaning as in the Indian Stamp Act, 1899.

3. Notwithstanding anything contained in the Indian Stamp Act, 1899 (hereinafter referred to as the said Act or that Act), or in any other law for the time being in force, when the registering officer is satisfied that impressed stamps of requisite description and value are not available from the Collecting Government, the stamp duty on instruments presented for registration, payable under the said Act, shall be paid to the registering officer, in cash when it is less than Rs. 100 and by chalan duly receipted by the Treasury when it is Rs. 100 or more in each case, who shall endorse the payment on such instruments under his dated signature, whereupon the same shall be deemed to have been duly stamped within the meaning of that Act."

a. This Act is published in the Dacca Gazette, Extraordinary, dated 21-7-1949.

## Synopsis

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| 1. Legislative changes.                        | 10. Determination of nature of instrument to see if stamp is sufficient. See Note 12 on Section 3.             |
| 2. Scope of sub-section.                       | 11. Admissibility of external evidence to prove that instrument is not duly stamped. See Note 12 on Section 3. |
| 3. Law applicable. See Note 2.                 | 12. Lost instrument.   |
| 4. Cancellation of stamps.                     | 13. Presumption as to sufficiency of stamp.  |
| 5. Endorsement by stamp vendor.                | 14. Loss or removal of stamp. See Notes on Section 35.   |
| 6. Stamps of wrong description, use of.        | 15. Instrument not duly stamped—Effect. See Section 35 and Notes thereon.                                      |
| 7. Illustrative cases.                         |  |
| 8. Time at which instrument should be stamped. |  |
| 9. Several sheets.                             |  |

1. **Legislative changes.**—There was no corresponding definition of the expression 'duly stamped' in the Acts of 1860, 1862 and 1869. But under S. 18 of the Act of 1869 no instrument chargeable with stamp-duty could be received in evidence unless such instrument bore a stamp of a value not less than the amount of the duty with which it was chargeable under the law in force in British India at the time of its execution.



The definition was first introduced in the Stamp Act of 1879. Section 3, cl. (10) of that Act defined expression as "stamped or written upon a paper bearing an impressed stamp in accordance with the law in force in British India when such instrument was executed or first executed." This definition was scarcely applicable where the instrument was first executed abroad and afterwards stamped in British India. Consequently, the definition was recast in the present form by the Stamp Act of 1899.<sup>1</sup>

**2. Scope of sub-section.**—This clause defines the expression 'duly stamped' as applied to an instrument. In order that an instrument may be 'duly stamped' it is not only necessary that the instrument must bear a stamp of the proper description and amount but also that the stamp should have been affixed or used in accordance with the law for the time being in force in British India.<sup>1</sup> The words "the law for the time being in force" refer to the Act under which the instrument is 'chargeable' under S. 2 (6). The proper amount of stamp duty required for an instrument has, therefore, to be determined in accordance with the Act in force at the time of execution or first execution of the instrument and not at the time when the document is tendered in evidence.<sup>2</sup>

The provisions of the Act which relate to the description of stamps and the mode of using them are contained in Ss. 10 to 14 and the rules framed under the Act which are to be regarded as part of the Act by virtue of S. 76. So also Ss. 17 to 19 provide as to the time of stamping instruments. Non-compliance with any of these provisions will make the document not duly stamped.

A Collector's certificate by way of endorsement on the instrument that the full duty chargeable thereon has been paid has the effect of making the document duly stamped by virtue of the provisions of S. 32.

**3. Law applicable.**—See Note 2.

**4. Cancellation of stamps.**—The words "affixed or used in accordance with the law in force in British India" imply that the provisions of the Act which deal with cancellation of adhesive stamps must also be complied with. These are contained in Ss. 12 and 19. Sub-section (2) of S. 12 provides that any instrument bearing an adhesive stamp which has not been cancelled shall be deemed to be unstamped so far as such stamp is concerned. It will be clear from this provision that even where adhesive stamps of the proper *amount* have been affixed to a document it will not be a duly stamped instrument unless all the adhesive stamps affixed thereon have been duly cancelled.<sup>1</sup>

#### Section 2 (11)—NOTE 1

1. ('04) 6 Bom L R 699 (701), *Motilal v. Jagmohan Das*.

#### S2 (11)—NOTE 2

1. ('04) 6 Bom L R 699 (701), *Motilal v. Jagmohan Das*.

('01) 23 All 213 (214): 1901 All W N 54 (FB).  
Reference under Section 57 of Act II of 1899.

Also see S. 2 (6) Note 1.

2. ('82) 5 Mad 394 (396): 7 Ind Jur 16 (FB),  
Reference under Stamp Act, S. 46. (Case under the Act of 1879.)

('85) 1885 Pun Re (Rev) No. 7, p. 10 (10),  
*In the matter of Devi Ditta Mal*. (Do.)  
[See however, (74) 13 Beng L R App 33 (34):  
21 Suth W R 446 (446) (DB), *Nundun Misser*  
*v. Mt. Chittur Buttee*. (Unstamped pro-

missory note executed before the Act of 1869 came into force—*Held*, document could not be allowed to be stamped and admitted in evidence under S. 28 of that Act.)]

#### S2 (11)—NOTE 4

1. ('29) 16 AIR 1929 Rang 270 (271): 126 Ind Cas 538, *Tun Hlaing v. Makha Bu*. (Promissory note affixed with two one anna stamps one of which was left uncanceled—Document *held* inadmissible in evidence as not duly stamped.)  
('33) 20 AIR 1933 Lah 148 (149): 145 Ind Cas 154 (DB), *Khazan Shah v. Attah Ullah*. (One out of four stamps on promissory note not cancelled—Document *held* inadmissible in evidence.)

Also see S. 12 Note 7.



**5. Endorsement by stamp vendor.**—As seen in Note 2, the infringement of any provision of the Act or the rules framed thereunder which regulate the procedure as to the use of stamps will render the document not duly stamped.

Where a document was written on more than one stamped sheet of the proper amount and there was no certificate of the stamp vendor under S. 49 of the Act of 1869 that a single stamp of the required amount was not available, it was held that the document was not duly stamped.<sup>1</sup> But it has been held that the absence of a similar certificate required by R. 5 (b) of the Rules dated 3rd March 1882, issued by the Governor-General in Council under the Stamp Act of 1879 does not make the document not duly stamped within the intention of that Act.<sup>2</sup> It has been held that the omission of a stamp vendor to endorse on a stamped paper the usual particulars required by R. 9 (a) of the Madras Government Notification No. 129, dated 24th July 1883, does not make the document not duly stamped.<sup>3</sup>

(See also Indian Stamp (East Bengal Amendment) Act, 1949).

**6. Stamps of wrong description, use of.**—Sections 10 and 11 deal with the description of stamps to be used. An instrument which bears a stamp of the proper amount is not duly stamped if the stamp used is one of improper description. Thus, where a document required by law to be engrossed on an impressed stamp, is stamped with adhesive stamps it will not be duly stamped even though they are of the proper amount.<sup>1</sup>

In the case of an instrument bearing a stamp of sufficient amount but of improper description, a Collector's certificate under the rules framed under S. 37 will make the document duly stamped from the date of its execution.

**7. Illustrative cases.**—Rule 6A of the Rules framed by the Governor General in Council under S. 9 of the Stamp Act of 1879 provided that promissory notes drawn or made in British India and chargeable with a duty of annas 6, 10 or 12 should be written on impressed sheets of those values bearing the word hundi. It was held that a promissory note written on an impressed stamp paper of the proper amount bearing the word 'hundi' was duly stamped even though the duty chargeable on the promissory note was not one of those mentioned in the above rule.<sup>1</sup>

Where a stamp paper furnished to the Court for engrossment of a sale-certificate thereon was inadvertently punched by some officer of the Court, but the paper was subsequently used as intended, it was held that the document was nonetheless duly stamped.<sup>2</sup>

#### S2 (11)—NOTE 5

1. ('74) 7 Mad H C R App 36 (36, 37), *Proceedings*, 6th November 1874.

('76) 1876 Pun Re No. 26, p. 42 (43) (DB), *Cheyn Sukh Dass v. Musa*.

('85) 1885 Pun Re (Rev) No. 7, page 10 (10), *In the matter of Devi Ditta Mal*.

Also see S. 10 Note 16.

2. ('91) 18 Cal 39 (41, 42) (SB), *Queen-Empress v. Trailokya Nath Baral*.

3. ('88) 11 Mad 377 (378) (FB), *Reference under Stamp Act*, S. 46.

#### S2 (11)—NOTE 6

1. ('82) 8 Cal 721 (723) : 11 Cal L Rep 310 (DB), *Radhakant Shaha v. Abhoychurn Mitter*, (Hundi for Rs. 500 payable 15 days after date bearing receipt stamps of 6 annas ins-

tead of impressed stamps—*Held*, it was inadmissible in evidence under S. 34 as not being 'duly stamped' as impressed stamps of 6 annas were required under Sch. I Art. 11 of the Act of 1879.)

#### S2 (11)—NOTE 7

1. ('90) 13 All 66 (71, 73) : 1890 All W N 238 (SB), *Radha Bai v. Nathu Ram*.

('91) 14 Mad 32 (35), *Bank of Madras v. Subbarayalu*.

('91) 1891 Pun Re No. 21, p. 124 (128) (DB), *Hill v. Nihal Chand*.

Also see S. 10 Note 12, S. 35 Note 3 and Art. 49 Note 4.

2. ('95) 18 Mad 235 (236) (FB), *Reference under Stamp Act*, S. 46.



An instrument bearing a stamp of the correct value will not become not duly stamped merely because the instrument is written on the reverse side of the stamp paper.<sup>3</sup>

**8. Time at which instrument should be stamped.**—Sections 17 to 19 deal with the time at which instruments should be stamped. Section 17 provides that all documents chargeable with duty and executed in British India shall be stamped before or at the time of execution, which according to S.2 (12) means signature.

**9. Several sheets.**—Section 13 of the Act provides that every instrument written upon a paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument. Any instrument written in contravention of this provision is to be deemed unstamped by virtue of S. 15. Where a promissory note was written on an impressed sheet and another blank impressed sheet was attached to it to make up the deficiency in stamp, it was held that the promissory note was inadmissible in evidence as not being duly stamped, as it contravened S. 13 and R. 7 (a) of Chap. 2 of the Rules framed under S. 75 of the Act.<sup>1</sup>

A hundi, which should, in accordance with a rule issued under S. 9 of the Act of 1879, have been written on one impressed sheet but which was in contravention of that rule written on two impressed sheets sewn together, was held to be not 'duly stamped.'<sup>2</sup>

A document was written on impressed stamp sheets of sufficient value and also on plain sheets of paper which were not attested by the parties who attested the stamped sheets as required by R. 5 (e) of the Rules framed under the Stamp Act of 1879. It was held that the document was duly stamped as the rule in question was *ultra vires*.<sup>3</sup>

A document though described as a hundi was in fact a bill of exchange and was written on three 'hundi' stamped papers aggregating to the full stamp duty. It was held that it was duly stamped in accordance with R. 6 of the Rules framed by the Governor-General-in-Council.<sup>4</sup>

See also the undermentioned case.<sup>5</sup>

**10. Determination of nature of instrument to see if stamp is sufficient.**—See Note 12 on Section 3.

**11. Admissibility of external evidence to prove that instrument is not duly stamped.**—See Note 12 on S. 3.

3. ('84) 7 Mad 176 (181) (FB), *Reference under Stamp Act, S. 46*.  
Also see S. 10 Note 17.

S2 (11)—NOTE 9

1. ('14) 1 AIR 1914 Mad 358 (359) : 23 Ind Cas 110, *Mohanlal Kanailal v. Kesrimull Chordiya*.

Also see S. 13 Note 4 and S. 35 Note 3.

2. ('86) 1886 Pun Re No. 73, p. 157 (158) (DB), *Samad Mir v. Brij Lal*.

3. ('85) 8 Mad 532 (540, 542) (FB), *Reference under Stamp Act, S. 46*. (The rule in question has however been repealed by Notification No. 1 C. N. No. 2170, dated 22nd May 1891.)

Also see S. 10 Note 17, S. 13 Note 5 and S. 75 Note 2.

4. ('19) 6 AIR 1919 Cal 235 (238) : 51 Ind Cas 88 (DB), *Biswanath Bhattacharjee v. Govinda Chandra Das*. (The fact that the stamp vendor was not a licensed vendor who was authorised to grant a certificate for the use of three stamps is immaterial.)

Also see S. 10 Note 16, S. 13 Note 4 and Art 13 Note 4.

5. ('70) 13 Suth W R 41 (43) (DB), *A. D. Dunne v. Ameroonissa Khatoon*. (A security bond was engrossed on an eight anna stamp and was threaded to other stamps worth Rs. 60 aggregating to the full value required—It was observed by Bayley J., that the objection that the stamps were put separately in violation of the rules of the Revenue Department was merely technical and did not affect the merits of the case.)



**12. Lost instrument.**—Where a hundi has been lost, a presumption arises under S. 118 (f) of the Negotiable Instruments Act, 1881, that the hundi is duly stamped. This includes a presumption that the stamp was duly cancelled.<sup>1</sup>

Where a certified copy of a compromise petition creating a mortgage was filed in a subsequent suit to enforce the mortgage, the original being lost, it was held that the certified copy was admissible in evidence as it could be presumed that the original application was duly stamped.<sup>2</sup>

**13. Presumption as to sufficiency of stamp.**—Where a document which is required by law to be stamped by the proper officer is proved to have been stamped, the presumption under S. 114 of the Evidence Act is that it was duly stamped by the proper officer.<sup>1</sup>

See also Note 12 and Note 35 on Preamble.

**14. Loss or removal of stamp.**—See Notes on S. 35.

**15. Instrument not duly stamped—Effect.**—See S. 35 and Notes thereon.

“Executed” and  
“execution.”

\*(12) “executed” and “execution,” used with reference to instruments, mean “signed” and “signature”:

#### Synopsis

- |                                    |   |
|------------------------------------|---|
| 1. Previous Acts.                  | 6. Thumb mark.  |
| 2. English law.                    | 7. Instruments by illiterate persons.                         |
| 3. Scope of sub-section.           | 8. Instruments by several persons.                            |
| 4. “Sign,” meaning of.             | 9. Unsigned document—Effect of.                               |
| 5. Place of signature.—See Note 4. | 10. Signature is not necessarily ‘execution’.—<br>See Note 3. |

**1. Previous Acts.**—The definitions of the words “executed” and “execution” have been introduced for the first time in this Act. In the earlier Acts these words were not defined.

In the undermentioned case<sup>1</sup> before the passing of this Act the question was as to when a hundi was executed. It was held that execution means the last act or series of acts which completes a document. A hundi was, therefore, held to be executed when it was delivered. Under the present Act a hundi will be executed when it is signed.

\*[Cf. (1870) 33 & 34 Vict. C. 97—S. 2 (7) ; (1891) 54 & 55 Vict. C. 39—S. 122 (1), para. 6.]

#### S2 (11)—NOTE 12

1. ('30) 17 AIR 1930 Sind 4 (8) : 126 Ind Cas 741 *Atmaram Mohanlal & Sons v. Notandas Devi Dayal*.

Also see S. 12, Note 10.

1. ('16) 3 AIR 1916 P C 41 (43) : 43 Ind App 264 : 38 All 494 : 39 Ind Cas 11 (PC) *Ahmad Raza v. Syed Abid Husain*.

Also see Preamble Note 35 S. 35 Note 13 and Art. 24 Note 1.

#### S2 (11)—NOTE 13

1. ('41) 28 AIR 1941 Lah 345 (346) : 196 Ind Cas 619 *Peoples' Instalment and Savings Bank Ltd. v. Gian Chand*.

#### Section 2 (12)—NOTE 1

1. ('95) 19 Bom 635 (638) (DB) *Bhawanji Harbhum v. Devji Punja*. (Hundi—Stamp cancelled when delivered—The stamp had to be cancelled at the time of or before execution.—Held that delivery of the document constituted execution—Case before the present Act when execution was undefined.)



In Upper Burma it is customary not to sign documents written on palm leaves and they are taken to be complete without signature.<sup>2</sup> But by virtue of this section they cannot be treated as "executed" for purposes of this Act and hence will not be chargeable with stamp duty. It has been held in the undermentioned case<sup>3</sup> that even under the old Stamp Act execution connoted signature and hence unsigned palm leaf documents were not liable to duty.

**2. English law.**—Section 122 (1), para 6 of the Stamp Act, 1891 (54 & 55 Vict. Ch. 39), runs as follows: "The expressions 'executed' and 'execution' with reference to instruments not under seal, mean signed and signature."

**3. Scope of sub-section.**—This clause does not mean that a signature affixed to an instrument will in every case amount to its execution. It only means that the execution of the instrument by the *executant* will be complete when he affixes his signature and not before. In other words, the question as to who is the executant of an instrument must be determined independently of this clause. This clause does not deal with the question. Once it is determined who is the executant, i.e., the person intended to be regarded as the maker of the instrument, this clause says when it may be considered that the document has been executed by him.

For instance, a person signing as a *witness* cannot on account of his signing the document be regarded as the executant of the document, because the test of execution is not his signing alone but his signing as a person executing a document, so that the intention with which the signature is affixed is an important factor in the determination of the question.<sup>1</sup>

Similarly, where A executes a bond in favour of B and B also signs the bond, B will not thereby become an "executant" of the bond.<sup>2</sup>

The definition given here is only for purposes of *stamp duty*. It does not mean that necessarily and in every case, an instrument will not be complete till it is signed. See Note 2.

**4. "Sign," meaning of.**—This sub-section states that the words "executed," and "execution" used with reference to instruments, mean "signed" and "signature." These words have, however, not been defined in this Act. Section 3 (52) of the General Clauses Act lays down that the word "sign" with reference to a person who is unable to write includes "mark". This provision also does not completely define the word "sign." The dictionary meaning of sign is "acknowledge or guarantee as one's own production or having one's authority or consent by affixing or having affixed one's name or initials or recognized mark."<sup>1</sup> The word "signed" in this sub-section must be taken in this wide sense so as not to restrict its use to cases of affixing the initials or names. The object of signing is the authenticating of a document by the person signing, as his own; and so long as this purpose is served it is immaterial whether the signature is by affixing the name or initials or other customary words or mark.<sup>2</sup>

Usually, a document is signed by writing the name at the end of the document.<sup>2a</sup> However, it is not *necessary* that the name should be at the foot or in fact in any

2. ('14) 1 AIR 1914 Low Bur 219 (219 220): 7 Low Bur Rul 77: 22 Ind Cas 75 (FB) *In re Chet Po.*

3. ('28) 15 AIR 1928 Rang 32 (33): 5 Rang 650: 196 Ind Cas 476 *Ma Saw v. Maung Ba.*

S2 (12)—NOTE 3

1. ('36) 23 AIR 1936 Lah 449 (451): 17 Lah 223: 162 Ind Cas 774 (SB) *Shams Din v. Collector Amritsar.*

2. ('36) 23 AIR 1936 Lah 449 (451): 17 Lah 223: 162 Ind Cas 774 (SB), *Shams Din v. Collector, Amritsar.*

S2 (12)—NOTE 4

1. The Concise Oxford Dictionary, 3rd Edition.

2. ('94) 18 Bom 586 (590) (DB), *Gangadharao v. S. Balapa Desai.*

2a. ('94) 18 Bom 586 (590) (DB), *Gangadharao v. S. Balapa Desai.*



particular part of the document.<sup>3</sup> On the other hand, every introduction of the name does not amount to signature. The introduction of the name must be such as to authenticate the document: it must show that the person named undertakes to be bound by the document. When such is the case the document will be deemed to be "signed" though the name is not affixed at the foot of the document.<sup>4</sup>

As seen already, a document may be signed by writing, instead of the name, any other words which it is customary for the executant to affix to documents of the kind in question.<sup>5</sup> Where a person added, at the top of a letter written by another, the words "*Guru Samarth*" and at the end of the letter "*Kalave bahut kay lihine, lobh karava, hi vinanti,*" it was held that this was the usual mode of signing letters among the class of people to which the executant belonged with a view to authenticate a document as one of the persons writing the words and that the letter must be held to have been "signed" by him.<sup>6</sup>

A document need not necessarily be signed with pen and ink. Thus, it may be signed by affixing the name stamp.<sup>7</sup>

A signature affixed to a document may, sometimes, relate only to a part of the document. In such cases, the remaining portion of the document must be taken as not executed.<sup>8</sup> In the undermentioned case<sup>9</sup> a document called *Sarkhat* was executed by X. The top portion of the document contained an agreement to pay interest at a certain rate and this portion was signed by X. Below the signature the first entry was made showing that a certain sum was advanced to X on the same date. Then followed a number of entries. These were neither totaled nor signed again. It was held that the signature was with respect to the first entry only and did not govern the other entries. The other entries were, therefore, not signed and in the absence of execution there were not so many separate agreements executed on various dates so as to require separate stamps.

It will be remembered that the dictionary meaning of the word "sign" given above includes the "having affixed" one's name or initials or mark to a document. Hence, "signing" a document need not be an act done by the executant personally. It may be performed through an agent. (See Note 7). It must be noted that when a person signs through an agent, the signatory and executant of the document is *not* the agent but the principal. Such cases must be distinguished from those in which a person executes a document as another's agent. In these latter cases the

3. ('16) 3 AIR 1916 Cal 61 (63): 28 Ind Cas 705 (DB), *Gangaram v. Lachiram*. (The document was not required to be signed or executed in any particular manner under any statutory provision. Consequently, the well-settled principle applied that the place and manner of a signature are immaterial, provided that the signature is inserted in such a manner as to authenticate the document, and where the instrument is in the handwriting of the party charged it is sufficient if his name is inserted at the commencement.) ('86) 10 Bom 71 (73) (DB), *Mahalakshmi Bai v. Firm of Nageshwar Purushotam*.  
4. ('21) 60 Ind Cas 746 (747) (DB) (Pat), *Suraj Mull Har Prasad v. Bank of Bihar*. ('81) 5 Bom 88 (88) (DB), *Andarji Kalyanji v. Dulabh Jeevan*. ('90) 14 Bom 511 (512) (SB), *Dulabh Vanmali v. Rehman Jamal*.

† ('77) 1 All 683 (685, 686) (SB), *Mathura Das v. Babu Lal*.

5. ('04) 31 Cal 1043 (1049): 9 Cal W N 83 (DB), *Sadasook Agarwalla v. Baikunta Nath*.

6.† ('94) 18 Bom 586 (589, 590) (DB), *Gangadhar Rao v. S. Balapa Desai*.

7. ('98) 25 Cal 911 (916): 2 Cal W N 642 (DB), *Nirmal Chunder v. Saratmoni Debya*.

8. ('34) 21 AIR 1934 Rang 49 (50): 12 Rang 174: 148 Ind Cas 886, *Financial Commissioner, Burma v. Indo Burma Watch Co. Rangoon*. (Warranty relating to watch and stating price need not be stamped as receipt also.)

9. ('28) 15 AIR 1928 All 162 (163): 50 All 504: 118 I.C. 173 (FB), *In the matter of Shyam Sundar Lal*.

Also see Art. 1 Note 9 and Art. 5 Note 14.



agent affixes his *own* signature. (See also A. I. R. Commentaries on Limitation Act, 2nd (1942) Edn., S. 19, Notes 31 and 50.)

5. **Place of signature.**—See Note 4.

6. **Thumb mark.**—Under S. 3 (52) of the General Clauses Act, a document may be “signed” or executed by an illiterate person by affixing his thumb mark.<sup>1</sup>

7. **Instruments by illiterate persons.**—Under S. 3 (52) of the General Clauses Act, the affixing of his mark by an illiterate person to a document amounts to his “signature” or execution of the document.<sup>1</sup>

Apart from this, an illiterate person can authorise another person to write his name on a document in token of his having executed it. This will also be his “signature.”<sup>2</sup> As seen in Note 4, ‘signature’ includes the “having affixed” one’s name, etc., by another.

8. **Instruments by several persons.**—If a document is drawn up in the name of several persons of whom only some execute the document, the question arises if the document is operative or not. This has to be decided with reference to the intention of the parties. If the intention is that *all* should sign, the document is incomplete till all have done so and is wholly inoperative.<sup>1</sup> It cannot operate even against those who have signed it, for such persons sign on the faith that others will follow and hence cannot be bound when the others refuse to sign.<sup>2</sup>

It has been held in the undermentioned case<sup>3</sup> that a contract is “made” within the meaning of S. 59 (1) of the English Stamp Act, 1891, where the signature of the last necessary party is affixed.

9. **Unsigned document—Effect of.**—A document which is not signed is not chargeable with any stamp duty.<sup>1</sup> Because, under S. 3 duty is chargeable only on

#### S2 (12)—NOTE 6

1. ('14) 1 AIR 1914 All 259 (259): 36 All 11: 21 Ind Cas 601 (FB), *Mutsaddi Lal v. Harkesh*.

#### S2 (12)—NOTE 7

1. ('74) 7 Mad H C R 358 (358), *Bheeman-gowda v. Eeranah*.
2. ('26) 13 AIR 1926 Oudh 489 (491): 94 Ind Cas 985 (DB), *Bhagwat Prasad v. Sher Khan*. (Where a person signs a document for an illiterate executant at his request with a pen touched by the latter the signature must be held to be made by the authority of the executant and may constitute valid acknowledgment.)
- (31) 18 AIR 1931 All 57 (57): 52 All 489: 127 Ind Cas 52, *Thakari Mallah v. Ram Tahal Jewari*. (An illiterate person can direct another person to sign across an adhesive stamp on his own behalf—Such signature will be quite good as his own signature for the purpose of cancelling the stamp under Section 12.)

#### S2 (12)—NOTE 8

1. ('16) 3 AIR 1916 Mad 692 (693): 39 Mad 597: 30 I. C. 713 (DB), *Nethiri Menon v. Gopalan Nair*.

- (02) 25 Mad 389 (393): 12 Mad L Jour 17 (DB), *Sivasami Chetti v. Sevugan Chetti*. (If parties intended that all the members of the family should execute the document, it cannot take effect by reason that the person who alone executed the document, happens to be the managing member of the family and the debt is recited to have been incurred for the benefit of the family.)
- (1840) 113 ER 678 (681): 9 LJ QB 201, *Latch v. Wedlake*. (Contract between X and three partners A, B and C signed by X, A and B only.)
- (1900) 1 QB 310 (319), *Muller & Co's Margarine Ltd. v. Commissioners of Inland Revenue*. (Affirmed in 1901 App Cas 217.)

#### S2 (12)—NOTE 9

1. See Note 4 on S. 3.
- (34) 21 AIR 1934 Rang 49 (50): 12 Rang 174: 148 Ind Cas 886 (SB), *Financial Commissioner, Burma v. Indo Burma Watch Co., Rangoon*.
- (34) 21 AIR 1934 All 1052 (1052): 152 Ind Cas 41 (DB), *In re Sukhdeo Prasad*.
- (14) 1 AIR 1914 Low Bur 219 (220): 7 Low Bur Rul 77: 22 Ind Cas 75 (FB), *In re Chet Po*.



documents which are "executed"—which means under this clause, "signed". It cannot also be registered.<sup>2</sup>

An unsigned document is regarded as not executed for the purpose of this Act. This does not mean that it is necessarily *incomplete*. Thus, in Upper Burma, by custom of the country, documents written on palm leaf are regarded as complete even without any signature. This Act does not affect this position. The only effect of this Act with respect to such documents is that they, being "unexecuted", are not chargeable with stamp duty and cannot, therefore, be made inadmissible in evidence on the ground that they are unstamped.<sup>3</sup>

10. Signature is not necessarily "execution."—See Note 3.

"Collecting Government."

"a(12A) "collecting Government" means—

- (a) in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts, and in relation to any other stamp duty chargeable under this Act and falling within item 59 in List I in the Seventh Schedule to the Government of India Act, 1935, the Central Government;
- (b) save as aforesaid, the Provincial Government.

a. This sub-section was inserted by A. O.

1. "Collecting Government."—This definition is new. It has been inserted by the Government of India (Adaptation of Indian Laws) Order, 1937

The words "the collecting Government" occur in the following sections of the Stamp Act: Ss. 2 (9) (b), 9, 10 (1) (b), 16, 18 (2), 33 (3) (a) and (b), 37, 49, 70, 74 and 75. In Ss. 9, 10 (1) (b), 16, 18 (2), 33 (3) (a), 37 and 75 the words originally used were "the Governor-General in Council" and in Ss. 2 (9) (b), 33 (3) (b), 49, 70 and 74, the words originally used were "the Local Government." The words "the collecting Government" were substituted for the words "the Governor-General in Council" and "the Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, as the passing of the Government of India Act of 1935 made such a change necessary. As the definition provides, the "collecting Government" means either "the Central Government" or the "Provincial Government" according to the stamp duty in question. In relation to stamp duty in respect of matters mentioned in S. 2 (12A) (a) it means "the Central Government". In relation to stamp duty in respect of the matters other than those mentioned in S. 2 (12A) (a) it means "the Provincial Government."

Section 2 (12A) (a) specifically refers to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance proxies and receipts. As will be seen from the provision of item 57 in List I (i.e. Federal Legislative List) in the Seventh Schedule to the Government of India Act, 1935, the rates of stamp duty in respect of these matters form the province of Central Legislation. The latter part of S. 2 (12A) (a) refers to any other stamp duty chargeable under the Stamp Act and falling within item 59 in List I in the Seventh Schedule

(23) 10 AIR 1923 Lah 242 (243): 71 Ind Cas 739, *Tirka v. Sohlu*.

2. (23) 10 AIR 1923 Lah 242 (243): 71 Ind Cas 739, *Tirka v. Sohlu*.

3.\*(14) 1 AIR 1914 Low Bur 213 (220): 7 Low Bur Rul 77: 22 Ind Cas 75 (FB), *In re Chet Po*.

(28) 15 AIR 1928 Rang 32 (33): 5 Rang 650: 106 Ind Cas 476, *Ma Saw v. Maung Ba*.

(21) 8 AIR 1921 Upp Bur 3 (4): 4 Upp Bur Rul 80: 66 I.C. 360, *Maung Po Din v. Maung Po Nyein*.



to the Government of India Act, 1935. Item 59 refers to fees in respect of any of the matters mentioned in the previous 58 items in List I but not including fees taken in any Court. Thus if stamp duty chargeable under the Stamp Act in respect of matters other than those specifically mentioned in S. 2 (12A) (a) has relation to the matters mentioned in the 58 items in List I in the Seventh Schedule to the Government of India Act, 1935, the "collecting Government" in relation to such stamp duty also will mean the "Central Government."

**2. Chief Controlling Revenue-authority—Meaning of—**See Note 1 relating to S. 2 (8) which has now been repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.

## Section 2 (12B)

## Provincial Amendment.

### BOMBAY

In section 2 after clause (12A), the following clause shall be *inserted*, namely :—

"(12B) 'Government securities' means Government security as defined in the Indian Securities Act, 1920;"

—Bombay Act II of 1949, S. 7 (1) [1-4-1949].

"Impressed stamp." \*(13) "impressed stamp" includes—

- (a) labels affixed and impressed by the proper officer, and
- (b) stamps embossed or engraved on stamped paper;

**1. "Impressed stamp."**—Stamps used under this Act are of two kinds : (i) impressed stamps and (ii) adhesive stamps.

This clause defines "impressed stamp". The definition is new. It makes it clear that an "impressed stamp" includes not only what is popularly known as stamp paper, namely, paper on which the stamp is *embossed* or *engraved*, but also *adhesive* labels which are affixed and impressed by the proper officer.<sup>1</sup>

Rule 10 of the Stamp Rules of 1925 read with Appendices II and III to those rules specifies the instruments which may be stamped by the affixation and impressing of labels by the proper officer and R. 11 of the Stamp Rules gives the procedure. Rule 9 of the Stamp Rules read with Appendix I thereto specifies the officers who are empowered to affix and impress labels and are 'the proper officers' for the purposes of the Act. In the absence of any evidence to the contrary the presumption is that the label on an instrument has been *affixed and impressed by the proper officer*.

Under Explanation to S. 49, a certificate by the Collector under S. 32 that the full duty with which an instrument is chargeable has been paid is an "impressed stamp" within the meaning of S. 49. For further discussion, see Notes on S. 49.

\*[1869—S. 3 (14).]

### Section 2 (13)—NOTE 1

1. ('41) 28 AIR 1941 Lah 345 (345, 346) : 196 Ind Cas 619, *Peoples' Instalment and Savings Bank Ltd., Lahore v. Gian Chand*.

2. ('41) 28 AIR 1941 Lah 345, (345, 346) : 196 Ind Cas 619, *Peoples' Instalment and Savings Bank Ltd., Lahore v. Gianchand*. Also see S. 35 Note 5.



\*(14) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded :

## Synopsis

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. "Instrument"—Essentials of definition.</li> <li>2. Entries in account books, registers, etc.</li> <li>3. Sale certificate.</li> </ol> | <ol style="list-style-type: none"> <li>4. Particulars filed under S. 104 (2). Companies Act.</li> <li>5. Illustrative cases.</li> <li>6. Decree whether instrument.</li> </ol> |
|---|--|

1. "Instrument"—Essentials of definition.—"Instrument" is defined Wharton in his *Law Lexicon* as "a formal legal writing, e.g., a record, charter, deed, or transfer, or agreement." In S. 122 (1) para. 3 of the English Stamp Act, 1891 (54 & 55 Vict. C. 39) "instrument" is defined as including every written document.

The definition given in this sub-section is new. The essentials of the definition are :

- (i) there must be a document, and
- (ii) by that document a right or liability must be, or must purport to be created, transferred, limited, extended, extinguished or recorded. Thus in short, an "instrument" as defined in this sub-section, is a document which affects any right or liability.<sup>1</sup>

The word "document" is not defined in the Act; but it is defined in S. 3 (16) of the General Clauses Act as follows :

"'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter."

Thus, an instrument and document are not synonymous. Every instrument is a document. But every document is not necessarily an instrument. It is only a document which affects a right or liability that will be an instrument.

The words used in the sub-section, are "any right or liability is, or purports to be, created, etc." This shows that even though a document does not on the face of it profess to affect any right or liability it will be an instrument if in law it has such an effect.

That a document is an *instrument* does not *ipso facto* make it liable to stamp duty. The liability to stamp duty can only arise under specific provisions creating such liability.

2. Entries in account books, registers, etc.—Entries in account books, registers, etc., would be instruments as defined in this sub-section if by those entries a right or liability is affected. In the register of sums payable with respect to the letting out of a sugar-cane pressing machine kept by plaintiff there was an entry to the effect that the defendant hired a sugar-cane pressing machine in consideration of a certain amount; that he would pay the hire on a certain date and in default would pay interest at a certain rate. Below the entry there was the thumb mark of the defendant. It was held that the entry was an instrument as defined in this sub-section.<sup>1</sup>

\*[Cf. (1870) 33 & 34 Vict. C. 97—S. 2 (4) ; (1891) 54 & 55 Vict. C. 39—S. 122 (1)), para. 3.]

## Section 2 (14)—NOTE 1

1. ('36) 23 AIR 1936 Nag 225 (226) : 167 Ind Cas 673 (DB), *Ananda Namdeo v. Pundalik Tukaram*.

## S2 (14)—NOTE 2

1. ('14) 1 AIR 1914 All 259 (259) : 36 All 11 : 21 Ind Cas 601 (FB), *Mutsaddilal v. Harkesh*.



An entry in a book may amount to any kind of instrument for the purpose of stamp duty. It may amount, for instance, to an acknowledgment, (Art. 1), an agreement (Art. 5), a bond (Art. 15), a promissory note, (Art. 49) or a receipt (Art. 53.)

3. **Sale Certificate.**—A sale certificate granted under O. 21 R. 94 of the Civil Procedure Code is not an “instrument” until it is signed by the Judge as it is in an imperfect state and does not create, transfer, limit, extend, extinguish or record any right or liability till then.<sup>1</sup>

4. **Particulars filed under S. 104 (2), Companies Act.**—Section 104 (1) of the Indian Companies Act, VII of 1913, provides that whenever a company having a share capital makes any allotment of its shares, the company shall, within one month after such allotment—

- (a) file with the Registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share ; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contract being duly stamped, and file with the Registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

Sub-section (2) of that section provides that where such a contract as mentioned in sub-section (1) (b) is not reduced to writing, the company shall, within one month after the allotment, file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and *these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899*, and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under 31 of the Indian Stamp Act.

**Illustrative cases.**—A letter was addressed by A to B in which A stated that he had entered a certain sum as a credit in his accounts as from a certain date for a specified period and at a specified rate of interest and that he would send the principal and the interest to B as per the due date. It was held that A bound himself to pay the principal and interest on a certain date and created a liability to that effect. The letter was, therefore, an ‘instrument’ as defined in this sub-section.<sup>1</sup>

A promissory note creates a liability and is, therefore, an ‘instrument’ as defined in this sub-section.<sup>2</sup>

6. **Decree whether instrument.**—The definition in this clause is wide enough to cover a *decree*. This does not, however, mean that a decree is necessarily subject

S2 (14)—NOTE 3

1. ('30) 17 AIR 1930 Bom 392 (393) : 128 Ind Cas 31 (FB), *Collector, Ahmednagar v. Rambhau*.

S2 (14)—NOTE 5

1. ('08) 4 Low Bur Rul 324 (329) : 14 Bur

L R 292 (FB), *In re V. R. S. A. R. Raman Chetty*.

2. ('40) 27 AIR 1940 Nag 214 (214) : I L R (1941) Nag 761 : 190 Ind Cas 818, *Jawanmal Balchand v. Akaji Anand Rao*.



to stamp duty always. It is not *all* instruments that are liable to stamp duty. It is only such instruments as are expressly made subject to stamp duty that require a stamp. In the case of decrees, a final decree for partition is liable to stamp duty. Such a decree is expressly included in the definition of an instrument of partition under sub-s. (15) of this section and is made liable to stamp duty under Art. 45. But in the absence of such an express provision, a decree of Court is not liable to stamp duty. Thus, a stamped paper is not necessary for passing a compromise decree, although such a decree merely embodies the agreement between the parties.<sup>1</sup> The reason is that such a decree or even the application for such a decree does not itself constitute the bargain between the parties but merely records *ex post facto* the fact of the agreement.

In *Radha Krishna v. Ram Narain*<sup>2</sup> it was held that a decree is not an instrument within the meaning of S. 39 of the Specific Relief Act. But this cannot affect the position under this Act as there is a special definition applicable to the question.

\*(15) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court and an award by an arbitrator directing a partition:

## Synopsis

- |   |   |
|---|---|
| 1. Legislative changes.                                 | 10. List of properties allotted to co-owners        |
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1. Legislative changes.—A partition-deed was defined for the first time by S. 3 (22) of Act XVIII of 1869 as follows:

"Partition Deed" means any instrument whereby persons interested in immovable property jointly, or in common, or as co-parceners, or as members of an undivided Hindu Family, divide or agree to divide such property in severalty and includes a batwara."

The definition contained in S. 3 (11) of Act 1 of 1879 was as follows:

" 'Instrument of partition' means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority."

\*[1879—S. 3 (11) ; 1869—S. 3 (22).]

S2 (14)—NOTE 6

1. ('08) 12 Cal W N 59 (60) (DB), *Pitambar Gain v. Udhav Mondal*.

('15) 29 Ind Cas 511 (512) (UPBR), *Mahadeo Prasad v. Basdeo Tiwari*.

2. ('31) 18 A I R 1931 All 369 (370) : 53 All 552 : 131 Ind Cas 604 (DB).



**2. Scope of the definition.**—The terms of the definition contained to the sub-section are exhaustive,<sup>1</sup> and provide for *all* cases of partition.<sup>2</sup> Thus, the definition provides for the parties having divided or agreed to divide the property as it lies with them actually to make a partition or to agree to make it later on. It also provides for arbitrators, to whom reference has been made, *directing* a partition because arbitrators have no power to do more than direct a partition and lastly it provides for the Courts effecting a partition.<sup>3</sup>

The real test of an 'instrument of partition' is whether there was any property of which the parties were co-owners and the property was being divided by that deed in severalty.<sup>4</sup>

**3. "Co-owners."**—This expression is wide enough to include all kinds of co-ownership such as joint tenancy, tenancy in common, coparcenary, membership of undivided Hindu family, etc. A reference to the definition of a partition-deed in S. 3 (22) of Act XVIII of 1869 makes this clear. The words used in that definition were "persons interested in immovable property jointly, or in common, or as coparceners, or as members of an undivided Hindu family." In the definitions in S. 3 (11) of Act I of 1879 and in the present sub-section these words have been omitted and the expression "co-owners" has been used instead, thereby making it clear that the expression is wide enough to include all those classes enumerated to in the definition in S. 3 (22) of Act XVIII of 1869.

One form of co-ownership may sometimes be converted into another form of co-ownership. This does not mean the *termination* of the co-ownership. Thus, an alienation of the interest of some of the members of a joint Hindu family to third persons will determine the status of *joint Hindu family* but will not determine the *co-ownership* which can only be determined by an actual partition or agreement to divide.<sup>1</sup> Similarly, when the members of a joint Hindu family effect a partition of the family properties they may leave out of the partition certain items which will continue to be subject to their common ownership though the form of co-ownership will be that of tenants in common and not of a Hindu joint family.<sup>2</sup>

For the purposes of this definition, the parties to the deed need not be really co-owners in the eye of the law. It is sufficient even if they *purport* to be co-owners. Further, even if the description as co-owners is not actually found in the document it is open to the Court to find on proper construction of its terms whether the parties purport to be co-owners of the property.<sup>3</sup>

#### Section 2 (15)—NOTE 2

1. ('35) 22 AIR 1935 Lah 364 (367) : 16 Lah 667 : 158 Ind Cas 502 (DB), *Abdul Hassain Khan v. Mt. Mahamudi Begam*.
2. ('07) 31 Bom 68 (72) : 8 Bom L R 869 (FB), *Kalidas v. Tribhuvandas*.
3. ('07) 31 Bom 68 (72) : 8 Bom L R 869 (FB), *Kalidas v. Tribhuvandas*.
4. ('49) 36 AIR 1949 Lah 126 (127, 128) (SB), Pak L R (1949) Lah 117. *West Punjab Govt. v. Gainchand*.

#### S2 (15)—NOTE 3

1. ('69-70) 13 Moo Ind App 181 (198) : 2 Sar 507 (PC), *Ram Chunder Dutt v. Chunder Coomar Mundul*.
2. ('23) 10 AIR 1923 Bom 237 (238) : 47 Bom 321 : 73 Ind Cas 718, *Superintendent of Stamps,*

*Bombay v. Chimanlal Lalbhai*.

[See also ('08) 35 Cal 961 (966) : 6 Cal L Jour 735 (DB), *Jogendra Nath Rai v. Baladeo Das*. (Mere definition of shares of joint proprietors does not amount to partition although such determination may effect a severance of joint interest—Suit for partition—Preliminary decree passed—Portion of property by mistake excluded from Commissioner's report and final decree—*Held*, effect of final decree was to leave unaffected joint title of parties in the portion so excluded.)]

- 3.† ('34) 21 AIR 1934 Mad 204 (205) : 150 Ind Cas 119 (DB), *Vankatappa Naidu v. Musal Naidu*.
- ('89) 12 Mad 198 (201) (FB), *Reference under Stamp Act S. 46*.



Where each party claims to be sole and full owner of the property but in order to avoid litigation agrees to release in favour of the other a portion of it, it is not a case of persons purporting to be co-owners of the property.<sup>4</sup>

As to whether partners are co-owners within the meaning of the definition See Note 11

4. "Any property."—In the definition of partition-deed in S. 3 (22) of Act XVIII of 1869 the reference was to "immovable property" only. In the present definition (as in the definition in S. 3 (11) of Act I of 1879) the words used are "any property." They will include movable as well as immovable property.

It has been held in the undermentioned Bombay case<sup>1</sup> that outstandings are not property capable of being partitioned within the meaning of the definition until realized. This does not seem to be correct. In the undermentioned case,<sup>2</sup> decided by the same High Court a document dividing outstandings between the partners of a firm was held to be an instrument of partition. In a recent Madras decision,<sup>3</sup> certain persons were directed by a decree in a partition suit to pay specific sums of money owed by them to the joint Hindu family, to individual members of the family and it was held that the decree amounted to an instrument of partition.

5. "Agree to divide."—In *Jogendra Nath Rai v. Baldeo Das*<sup>1</sup> their Lordships of the Calcutta High Court observed:

Deed not reciting that property going to executant was already divided only mention being that family had disrupted and some property was still held in common by executant and his father and that it was being divided by deed for first time — Deed held instrument of partition.

('49) 36 AIR 1949 Lah 126 (128): Pak L R (1949) Lah 117 (SB), *West Punjab Govt. v. Gainchand*. (Deed not reciting that property going to executant was already divided only mention being that family had disrupted and some property was still held in common by executant and his father and that it was being divided by deed for first time Deed held instrument of partition.)

[See also ('33) Mad S M p. 127-128. (Citing, B. P. 571, 12th December 1893—Transaction evidenced by a document was that A divided certain property into two shares, one of which he gave to his brother and his three sons, and the other to his nephew—The document was not executed by A, but by the five parties to whom the property was given—These parties acknowledged having received the property, which was valued at Rs. 3,280, as well as their liability for Rs. 1000 due on a promissory note executed by A—The document was stamped as a release for Rs. 2280, being the value of the property received minus the liability accepted with it—The Collector held that though the document set forth that there was no ancestral property, and that the property now possessed by the family was acquired from the profits in trade and the exertions of the executee A, yet it also showed that the acquirer tracted the other members of the family as co-owners, as the property was acquired in the name of the

eldest member of the family and as the executants now accept for their 'shares' portions of the liabilities as well as of the assets of the family—The Bond agreed with the Collector and considered that the document was a partition-deed.)

('33) Mad S M p. 130. (Citing, B.P. 1415-R., Mis., 28th October 1918 (Referred case 4 of 1918)—A division was effected by father alone but nonetheless it was held to be a partition, because the sons had also an interest in the property—It has been settled that under the Hindu Law the father is entitled to make a partition of the family properties even though the sons may not agree—It may be some of the properties mentioned in the deed of partition were acquired by the father in the business mentioned there—But that in itself would not make itself-acquired property—Even if it was so originally, it was open to the father to throw it into the hotchpot and make it family property.)]

4. ('15) 2 AIR 1915 All 421 (422): 38 All 56: 31 Ind Cas 404 (FB), *Mt. Jiban Kuar v. Govind Das*.

#### S2 (15)—NOTE 4

1. ('43) 30 AIR 1943 Bom 345 (346): 210 Ind Cas 279, (DB), *Kersaji Dhanjibhai v. Barjorji Bhikhaji*.
2. ('01) 3 Bom L R 132 (133) (FB), *Choturam v. Ganesh*.
3. ('38) 25 AIR 1938 Mad 307 (311): 183 I.C. 33 (DB), *Satyanandam v. Paramkusam Nammayya*.

#### S2 (15)—NOTE 5

1. ('08) 35 Cal 961 (966): 5 Cal L Jour 735 (DB).



"Partition is the division made between several persons, of joint lands, which belong to them as co-proprietors, so that each becomes the sole owner of the part, which is allotted to him. The mere definition of the shares of the joint proprietors does not amount to partition of the property.....To effect a partition.....the property, if susceptible of division, must be transformed into estates in severalty and one of such estates assigned to each of the former occupants for his sole use and as his sole property."

But the definition in this sub-section expressly includes an instrument by which co-owners *agree* to divide the property and do not actually divide it by metes and bounds.

But the agreement must be for immediate partition. An agreement to divide property *in future* is not an instrument of partition.<sup>2</sup>

Where a document recording a division of properties both situated in British India and Travancore between two brothers provided that the document should remain in force till separate partition-deeds were executed for the properties in Travancore and British India it was held that the deed was chargeable as an instrument of partition under Art. 45.<sup>3</sup> It will be noted that in this case there was an actual partition effected by the deed.

In the undermentioned case<sup>4</sup> the parties entered into an agreement whereby they agreed to divide the properties according to the terms of the award given by arbitrators. The argument was that the award being binding on the parties the further agreement was unnecessary and was chargeable only as a miscellaneous agreement and not as an instrument of partition. It was held that the agreement was an agreement to divide property in severalty within the meaning of S. 3 (11) of Act 1 of 1879. It will be noted that S. 3 (11) of the Act of 1879 did not include an award within the definition of an instrument of partition.

An agreement by co-owners to divide the property is chargeable under Art. 45 as an instrument of partition and not as an agreement under Art. 5.<sup>5</sup>

6. "In severalty."—"He who holds lands or tenements in severalty, or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him, in joint of interest, during his estate therein."<sup>1</sup> Where one of the co-parceners renounced his claim for partition against the joint family property in consideration of a certain income to be enjoyed by him for his

2.†('33) 20 AIR 1933 Mad 162 (162): 145 Ind Cas 529, *Gangaiya v. Chinna Lingaya*. (Partition list which does not itself effect partition but is agreement for effecting future partition on terms agreed is liable to stamp duty not under S. 2 (15) but under Stamp Act (Madras) Sch. I-A, Art. 4.)

('84) 7 Mad 385 (387) (FB), *Reference under Stamp Act S. 49*. (List of share of a member of joint Hindu family in the family property containing statement "outstandings due to us shall be collected and divided among us according to the shares mentioned above"—*Held*, it was an agreement for the future division of outstandings and therefore required an agreement stamp.)

('42) 29 AIR 1942 All 220 (221): 201 Ind Cas 578 (SB), *In re Tirathraj*, (Provision in a deed that parties might by some separate agreement arrange for partition of some of

the properties—*Held* there was nothing to show that the instrument itself was intended to divide the properties—On the face of it they were to be divided afterwards by a separate agreement—The document was not a deed of partition.)

Also see Art. 5 Note 3.

3. ('20) 7 AIR 1920 Mad 149 (149): 55 Ind Cas 965 (DB), *Rajangam Aiyer v. Rajamangam*.

4. ('91) 15 Bom 677 (681): 1891 Bom P J 28 (FB), *In re Vasanji Haribhai*.

Also see Note 16.

5. ('33) Mad S M p. 10. (Citing, B. P. 504, 30th August 1887)

S2 (15)—NOTE 6

1. Wharton, *Law Lexicon*, 14th Edition.



life out of certain lands over which he was given no power of alienation it was held that the document was not one whereby co-owners agreed to divide property in severalty.<sup>2</sup>

For a division in severalty within the meaning of the definition, it is, however, not necessary that the allotment should be made to each individual and not to a group of persons. Even when the allotment is made as between several groups of sharers all of whom together had originally owned the property in common there is a division in severalty. Thus the true antithesis is between the original common ownership and the subsequent cessation of that common ownership and the question whether the substituted ownership is created by way of allotments to each individual amongst the original common owners or to groups of individuals is not material.<sup>3</sup>

See also Note 7.

**7. Division of status under Hindu law.**—In Hindu law partition does not mean simply division of property into specific shares; it covers both division of property and severance of status as joint family.<sup>1</sup> In the latter case, there is only a division of *title*. For a division of right or title to property an actual division of property by metes and bounds is not necessary. An unequivocal and clear expression of intention on the part of a member of the joint Hindu family to separate himself and enjoy his share in severalty is sufficient.<sup>2</sup> As observed by their Lordships of the Privy Council in *Girja Bai v. Sadashiv*.<sup>3</sup>

“Separation from the joint family involving the severance of the joint status so far as the separating member is concerned, with all the legal consequences resulting therefrom, is quite distinct from the *de facto* division into specific shares of the property held until then jointly. One is a matter of individual decision, the desire on the part of any one member to sever himself from the joint family and to enjoy his hitherto undefined or unspecified share separately from the others without being subject to the obligations which arise from the joint status; whilst the other is the natural resultant from his decision, the division and separation of his share which may be arrived at either by private agreement among the parties, or on failure of that by the intervention of the Court. Once the decision has been unequivocally expressed and clearly intimated to his co-sharers, his right to obtain and possess the share to which the admittedly has a title is unimpeachable; neither the co-sharers can question

2. ('95) 18 Mad 233 (234) (FB), *Reference under Stamp At. S*, 46.

Also see Note 12.

3. ('37) 24 AIR 1937 Mad 308 (309): ILR (1937) Mad 553:167 Ind Cas 439 (SB), *Board of Revenue v. Alagappa*.

#### S2 (15)—NOTE 7

1.†('16) 3 AIR 1916 P C 104 (107): 43 Ind App 151: 43 Cal 1031: 12 Nag L R 113: 37 Ind Cas 321 (PC), *Mt. Girja Bai v. Sadashiv Dhundiraj*.

(‘27) 14 AIR 1927 P C 224 (226): 52 Bom 8: 54 Ind App 413: 105 I.C. 703 (PC), *Mukund v. Balkrishna*.

\*('66) 11 Moo Ind App 75 (89): 8 Suth W R 1 (PC), *Appovier v. Rama Subba*.

2.†('27) 14 AIR 1927 P C 224 (226): 52 Bom

8: 54 Ind App 413: 105 Ind Cas 703 (PC)\* *Mukund v. Balkrishna*.

†('16) 3 AIR 1916 P C 104 (107): 43 Cal 1031: Ind App 151: 12 Nag L R 113: 37 Ind Cas 321 (PC), *Mt. Girja Bai v. Sadashiv Dhundiraj*. ('74) 1 Ind App 9 (20): 3 Sar 304 (PC), *Runjeet Singh v. Kooer Gunraj Singh*.

†('13) 35 All 80 (87): 40 Ind App 40: 16 Oudh Cas 129: 18 I.C. 30 (PC), *Suraj Narain v. Ikbai Narain*.

(‘89) 13 Bom 25 (31): 13 Ind Jur 145 (DB), *Ananta Balacharya v. Damodhar Makund*. ('86) 12 Cal 96 (101) (DB), *Tej Pratap Singh v. Champa Kalee Koer*.

(‘80) 2 Mad 89 (88): 6 Ind App 177 (PC) *Chidambaram Chettiar v. Gauri Nachiar*.

3. ('16) 3 AIR 1916 P C 104 (108): 43 Cal 1031: 43 Ind App 151: 12 Nag L R 113 37 I.C. 321 (PC).



it nor can the Court examine his conscience to find out whether his reasons for separation were well founded or sufficient; the Court has simply to give effect to his right to have his share allocated separately from the others."

The severance of status being a matter of individual volition may be but need not necessarily be by agreement between the members of the family.<sup>4</sup> The agreement need not be in writing.<sup>5</sup> Even if it is reduced to writing, it is conceived that the document will not come under the definition of instrument of partition, in this sub-section where its effect is only to alter the form of co-ownership into tenancy-in-common and not to make a division of the property in severalty, as the sub-section clearly requires an intention to divide property in severalty in order to constitute an instrument of partition.

**8. Admission of previous partition.**—An instrument which contains a mere admission or acknowledgment of a previous partition is not an instrument of partition within this definition.<sup>1</sup> But merely because a document uses words in the past tense it cannot be held that it refers to a past transaction.<sup>2</sup>

**9. Acknowledgment of receipt of property by a co-owner.**—Documents whereby each of the members of an undivided Hindu family acknowledges the receipt of property made over to him in a division of the family properties have been held to be instruments of partition.

**10. List of properties allotted to co-owners.**—No particular form is prescribed for an instrument of partition. A list or lists allotting different properties to different co-owners may amount to an instrument of partition if the parties intend to treat them as such.<sup>1</sup> If, however, the intention is to treat it merely as a memorandum of a *previous* completed transaction<sup>2</sup> or of an agreement for a partition to be effected in future<sup>3</sup> it will not be an 'instrument of partition' under this sub-section.

**11. Partnership.**—Partners of a firm may be said to be co-owners of the partnership property within the meaning of the definition. Section 253 of the Contract

4. ('16) 3 AIR 1916 PC 104 (109): 43 Cal 1031: 43 Ind App 151: 12 Nag L R 113: 37 I. C. 321 (PC), *Mt. Girja Bai v. Sadashiv Dhundiraj*.

('74) 1 Ind App 9 (20): 3 Sar 304 (PC), *Runjeet Singh v. Koorer Gujraj Singh*.

[But see ('85) 9 Bom 115 (121), *Ashabai v. Haji Tyeb Haji Rahimtulla*. (Must be taken to be overruled by AIR 1916 PC 104: 43 Cal 1031: 45 Ind App 151: 12 Nag L R 113 (PC).)]

5. ('09) 31 All 412 (422, 423): 36 Ind App 71: 3 Ind Cas 195 (PC), *Parbati v. Naunihal Singh*.

#### S2 (15)—NOTE 8

1. †('84) 7 Mad 385 (386 (FB), *Reference under Stamp Act, 1879, S. 49*. (Document containing a memorandum of particulars of property which had, on partition, fallen to the share of one of the co-owners—*Held*, it does not, of itself, operate to release the joint interests of the other parties to the partition and create a sole interest in the person whose share it records.)

† ('28) 15 AIR 1928 Cal 705 (705): 112 Ind Cas 326 (DB), *Bhudeb Chatterjee v. Asutosh Gangopadhyaya*.

('81) 5 Bom 232 (236), *Sakharam Krihnaji v. Madan Krishnaji*. (Case under S. 17, Registration Act.)

('49) 29 AIR 1942 All 220 (221): 201 Ind Cas 578 (SB), *In re Tirathraj*.

('78) 2 Bom 635 (636) (DB), *Kachubhai v. Krishnabai*. (Case under S. 17, Registration Act and S. 91, Evidence Act.)

2. ('10) 6 Ind Cas 346 (348) (DB) (Cal), *Upendra Nath v. Umesh Chandra*. (Case under S. 17, Registration Act.)

#### S2 (15)—NOTE 9

1. ('92) 15 Mad 164 (165) (FB), *Reference under S. 46 Stamp Act, 1879*.

#### S2 (15)—NOTE 10

1. ('08) 32 Bom 509 (511): 10 Bom L R 728 (FB), *Ganpat v. Supdu*. (Four brothers making four lists of family property—Each list signed by three of them and retained by the fourth—*Held*, the four documents when read together formed an instrument of partition and each document formed title of the brother retaining it against the three brothers with regard to property which came to his share.)



Act (now repealed) specifically provided that in the absence of a contract to the contrary all partners are joint owners of the partnership property. Where by a deed certain partners of a firm divided certain debts of the firm between them but remained joint as regards other items it was held that the deed was an instrument of partition.<sup>1</sup> Though the Partnership Act, 1932, does not contain any specific provision like the repealed S. 253 of the Contract Act the position under the Partnership Act also must be considered to be the same.

An instrument of partition among partners is not the less such an instrument merely because it is part of a scheme for the dissolution of the partnership. In such a case the document may be both an "instrument of partition" (Art. 45) and an instrument for the dissolution of a partnership. In such a case it will be liable to the higher duty as an instrument of partition under Art. 45, by virtue specified of S. 6.<sup>2</sup>

**12. Deed of release.**—An instrument of release must be distinguished from an instrument of partition. An instrument of release has been described in Art. 55 as one whereby a person renounces a claim upon another person or against any property.

In *Mt. Jiban Kuar v. Govind Das*<sup>1</sup> one M died childless leaving certain property. The sister of the deceased applied for Letters of Administration. One G a collateral of M disputed her claim. Eventually the two claimants effected a compromise. Both of them executed separate instruments. The question was whether the instruments were instruments of release or the two deeds read together constituted an instrument of partition. It was observed :

"We are satisfied that as the deeds stand, they are instruments of release within the meaning of Art. 55, Sch. I, Stamp Act. The case as put by the lady in her deed is that under the Mayukha Law, she is the owner of the property left by the deceased Mathura Das. The case as put by Govind Das in the document executed by him is that under the Mitakshara Law, he is the sole owner of the property in question. Neither of them states himself or herself as co-owner with the other, nor can they do so rightly. We therefore have not a case of persons purporting to be co-owners of the property and agreeing to divide the same. Each party before us claims to be the sole and full owner and in order to avoid litigation agrees to release in favour of the other a certain portion of the property which he or she claims to be his or her property in full."

[See also ('33) Mad S M p. 128, (Citing, B. P. 584, 20th December 1893, as amended by B. P. Mis. 2679 : 5-8-36—A book containing certain lists of property signed by the parties produced before the Deputy Collector of Madras as evidence of partition in connexion with an application for an A form certificate was held by the High Court to be a partition-deed within the meaning of the Act.)]

2. ('84) 7 Mad 385 (386) (FB), *Reference under Stamp Act*, S. 49.

3.†('33) 20 AIR 1933 Mad 162 (162) : 145 Ind Cas, 529, *Gangaiya v. China Lingaiya*. (Partition list containing an agreement for a subsequent stamped instrument—*Held*, the list was not itself an instrument of partition but was a mere agreement for effecting a future partition on the terms agreed.)

('93) 1893 Bom P J 203 (DB), *Nilkant v. Maruti*. (List of properties allotted to coparceners alluded to and confirmed in arbitration award evidencing final partition—*Held*, the list was not an instrument of partition.)

#### S2 (15)—NOTE 11

1. ('01) 3 Bom L R 132 (133) (FB), *Choturam v. Ganesh*. (The partition herein was before dissolution of partnership—See AIR 1937 Mad 308 : ILR (1937) Mad 553 (FB).  
2. ('37) 24 AIR 1937 Mad 308 (309) : ILR (1937) Mad 553 : 167 Ind Cas 439 (FB) *Secy. Board of Revenue, Madras v. Alagappa Chettiar*.

Also see S. 6 Note 5 and Art. 64 Note 3.

#### S2 (15)—NOTE 12

1.†('15) 2 AIR 1915 All 421 (422) : 38 All 56 : 31 Ind Cas 404 (FB).



See also the undermentioned cases.<sup>2</sup>

Where a member of a joint Hindu family renounced his claim for partition against the family property in consideration of a certain income to be enjoyed by him for his life out of certain lands allotted for the purpose, but over which he was given no power of alienation the instrument was held to be a deed of release.<sup>3</sup>

An instrument will not be an instrument of release merely because it is styled as a deed of release or couched in terms of a deed of release if the effect of the document is to divide the property amongst the co-owners.<sup>4</sup>

**13. Sale and partition.**—An instrument of partition will not be the less an instrument of partition because a sum is paid by one co-owner to others as owelty (amount payable by one sharer to another for equalising the partition). Such a document is to be distinguished from a conveyance on sale, because the money is not paid as the consideration or *price* for the share allotted.<sup>1</sup>

**13a. Deed of transfer.**—An instrument, though in the form of a transfer of property by one co-owner to others, will be chargeable as a deed of partition under Art. 45 if in substance the effect of the document is to divide the property of the co-owners amongst them.<sup>1</sup>

**14. Final order of Revenue-authority.**—In the definition of partition-deed in S. 3 (22) of Act XVIII of 1869 the words used were “and includes a batwara.” The word “batwara” is said in Wilson’s *Glossary* “to imply a separation of co-parcenary holdings at the desire of some or of all the co-parceners, or the detachment of the share of an individual so as to constitute his share an entirely distinct property made with the sanction of revenue authorities.” The word “batwara” was omitted in the definition in S. 3 (11) of Act 1 of 1879 and the words “includes also a final order for effecting a partition passed by any Revenue authority” were added. They have been retained in the present definition.

Under O. 20 R. 18, Civil Procedure Code, when a decree for partition passed by a Civil Court relates to an estate assessed to the payment of revenue to the Government, the decree simply declares the rights of the several parties interested in the

2. ('85) 9 Bom 417 (418) (SB), *Eknath v. Jagannath*. (*J* and *S* passed to their brother *E* an instrument which set forth (a) that *J* and *S* relinquished their right to certain property in favour of *E*; (b) that *E* was to discharge certain debts and (c) that *E* was to pay an annuity to *J* and *S*—Held, the document was a release deed.)

('81) 7 Cal 21 (23) (FB), *In the matter of the Maharaja of Durbhungah*. (Maintenance deed under which grantee gave up his claims in respect of the family property was held to be a deed of release and not conveyance.)

('27) 14 AIR 1927 P C 224 (226) : 54 Ind App. 413 : 52 Bom 8 : 105 Ind Cas 703 (PC), *Mukund Dharman Bhoir v. Balkrishna Padmanji*. (Document by which one brother stated that he had no interest in the property of the other brother held not to be a partition deed.)

3. ('95) 18 Mad 233 (234) (FB), *Reference under Stamp Act, S. 46*.

Also see Note 6.

4. ('49) 36 AIR 1949 (Lah 126 (128) : Pak L R (1949) Lah 117 (SB). *West Punjab Govt. v. Gain Chand*. (Document described as a deed of relinquishment but held to be an instrument of partition.)

('11) 35 Bom 75 (78) : 8 Ind Cas 632 (FB), *In re Govind Pandurang Kamat*.

('89) 12 Mad 198 (201) (FB), *Reference under Stamp Act*.

(1928) 108 Ind Cas 427 (430) (Pat), *Rang Lal Sahu v. Emperor*. (Assumed.)

S2 (15)—NOTE 13

1. (1867) 2 Ex 46 (50) : 36 L J Ex 11 : 15 L T 282 : 15 W R (Eng) 258, *Christie v. Commissioners of Inland Revenue*.

(1867) 2 Ex 399 (400) : 36 L J Ex 199 : 16 L T 839, *Phillips v. Inland Revenue Commissioners*. (*Christie v. Commissioners of Inland Revenue*, (1867) 2 Ex 46 : 36 L J Ex 11, followed.)

S2 (15)—NOTE 13a

1. ('23) 10 AIR 1923 Bom 237 (238) : 47 Bom 321 : 73 Ind Cas 718 (FB), *Superintendent of Stamps v. Chimanlal Lalbhai*.

Also see Art. 62 Note 4.



property but directs such partition to be made by the Collector or any gazetted subordinate of the Collector. The final order in the partition proceedings by the Collector or his subordinate will amount to an instrument of partition.<sup>1</sup>

So also, certain revenue laws such as Land Revenue Acts provide for partition by Revenue-authorities. The final order in the partition proceedings under these Acts will also amount to an instrument of partition.

An order passed by a Revenue Court authorising a partition to proceed is not a *final* order for effecting a partition but the order *declaring the various* allotments of the land is such a final order.<sup>2</sup>

In the undermentioned case<sup>3</sup> it has been held that before a final order is passed there must be a recorded act of division by the co-owners or their agreement to make it in every case and the final order is simply the fiat of the Revenue-authority sanctioning the partition. This, however, does not seem to be correct. An actual division or an agreement to divide itself amounts to an instrument of partition under the definition and therefore there would be no necessity of including a final order of the Revenue-authority in the definition if a recorded act of division by the parties or their agreement to make it is a condition precedent to the passing of such order.

**15. Final Order of Civil Court.**—There was no provision in Act XVIII of 1869 and Act I of 1879 for including a final order for effecting a partition passed by a Civil Court in the definition. The provision was for the first time made in the Act of 1899. It is not, however, clear why the Legislature has chosen to include such an order in the definition so as to make it chargeable with stamp duty, seeing that when a person institutes a suit for partition he pays court-fee and the exaction of stamp duty on the *decree* in such a suit will amount to double taxation.<sup>1</sup>

The order must be one *for effecting a partition*. Therefore, a preliminary decree which merely declares the rights of the parties is not a final order for effecting a partition within the meaning of the definition.<sup>12</sup> But the final decree allotting a parti-

#### S2 (15)—NOTE 14

1. See ('11) 12 Ind Cas 769 (769) (Mad), *Seshachalam Pillai v. Alwar Chetty*. (S. 2 (15) included in the definition of partition a final order for effecting a partition passed by a Revenue authority, that is to say, an order which is made in the course of execution of the decree under the Civil Procedure Code.)

('43) 30 AIR 1943 Bom 345 (346): 210 Ind Cas 279 (DB), *Kersaji Dhanjibhai v. Barjorji Bhikaji*. (Partition suit dealing with revenue paying lands—Court's decree merely determines the shares and papers are sent to Collector who does not draw up any document which is an instrument of partition until after partition has actually been made.)

2.† ('80) 2 All 664 (665) (FB), *Reference by Board of Revenue, N. W. P. under Act I of 1879*.

('43) 30 AIR 1943 Bom 345 (346): 210 Ind Cas 279 (DB), *Kersaji Dhanjibhai v. Barjorji Bhikaji*. (The Collector does not draw up any document which is an instrument of partition until after the partition has actually been made.)

3. ('80) 2 All 664 (665) (FB), *Reference by Board of Revenue, N. W. P. under Act I of 1879*.

#### S2 (15)—NOTE 15

1. See ('97) 7 Mad L J (Jour) 467 (470). [See also ('32) 19 AIR 1932 Mad 722 (723): 55 Mad 975: 139 Ind Cas 457 (DB), *Venkatasubamma v. Ramanandhayya*. (In a partition suit defendant is not required to pay court-fee on his share—Right of the Crown to some revenue on the claim of the defendant is satisfied by the direction in the Stamp Act that the decree as finally drawn up should be stamped as an instrument of partition.)]

1a.† ('12) 35 Mad 26 (27): 12 Ind Cas 775, *Thirvengadathan Aiyar v. Mangayya*.

('32) 19 AIR 1932 Rang 120 (122): 139 Ind Cas 673, *Chit Sai Maung v. Maung Thein*.

[See also ('08) 35 Cal 961 (966): 6 Cal L Jour 735 (DB), *Jogendra Nath Rai v. Baladeo Das*. (Preliminary decree in partition suit merely determines shares of the joint proprietors but does not effect partition.)]

('95) 18 Mad 73 (87): 4 Mad L Jour 212 (DB) *Krishnaswami Ayyangar v. Rajagopala Ayyangar*. (A provision a decree is permitted to be



cular and ascertained property to each co-sharer and vesting it in him is such final order.<sup>2</sup> An order passed by the Civil Court in execution of the final decree is not a "final order" within the meaning of the definition because further proceedings in execution of the final decree will be merely for delivery of possession and not for effecting a partition.<sup>3</sup>

A reference to O. 20 R. 18, Civil Procedure Code, shows that there need not be preliminary decree and a final decree in every case and there may be only one decree in some cases, which will completely dispose of the suit. Such a decree will amount to a "final order" within the meaning of the definition.<sup>4</sup> So also a decree for partition may be partly preliminary and partly final and in such a case the decree will amount to an instrument of partition, so far as it is final.<sup>5</sup>

A compromise decree allotting specific properties to several parties in accordance with the compromise of the partners is nonetheless a final decree and is chargeable as an instrument of partition.<sup>6</sup> So also a decree passed on an award by arbitrators directing a partition is an instrument of partition.<sup>7</sup> But the decree in order to fall under the definition need not have been made on an award or an agreement of the parties.<sup>8</sup> (See also Note 14.)

A decree passed under S. 396 of Civil Procedure Code of 1882 in accordance with the Commissioner's report was held to be a final order for effecting a partition.<sup>9</sup> Order 26, Rr. 13 and 14 now make it clear that the final decree passed under R. 14 after the partition is carried out by the Commissioner is an instrument of partition within the meaning of the definition.<sup>10</sup>

Though the final order must be one for effecting a partition it is not necessary that it must have been passed in partition suit. Thus an order for effecting a partition may be passed in an administration suit and would come within the definition.<sup>11</sup>

passed by S. 215. Civil Procedure Code of 1882 in a suit for dissolution of partnership and a partition suit which has for its object the determination of coparcenary is similar to it—A provisional decree ought to declare the several rights and liabilities which have been adjudicated.)]

2.†('12) 35 Mad 26 (27):12 Ind Cas 775, *Thiruvengadathan Aiya v. Mangayya*.

('38) 25 AIR 1938 Lah 321 (322): 179 Ind Cas 710, *Ram Narain Kaul v. Bishan Rani*.

[See also ('26) 13 AIR 1926 Pat 154 (156): 90 Ind Cas 739 (DB), *Hemchandra v. Prem Mahto*. (The decree that is finally drawn up in the partition suit has to be stamped as an instrument of partition under the Stamp Act.)]

[But see ('11) 12 Ind Cas 769 (769) (Mad), *Seshachalam Pillai v. Alwar Chetty*. ("Final order" in S. 2, cl. (15) cannot be read to mean final decree.)]

3. ('12) 35 Mad 26 (27):12 Ind Cas 775, *Thiruvengadathan Aiya v. Mangayya*.

[But see ('11) 12 Ind Cas 769 (769) (Mad), *Seshachalam Pillai v. Alwar Chetty*. (The final order in S. 2 (15) does not mean final decree. (The order is one passed by Civil Court in execution of a decree.)]

4. ('38) 25 AIR 1938 Mad 307 (311): 183 Ind Cas 33 (DB), *Satyanandam v. Paramkusam*.

5. ('38) 25 AIR 1938 Mad 307 (311): 183 Ind Cas 33 (DB), *Satyanandam v. Paramkusam*.

6.† ('12) 35 Mad 26 (27):12 Ind Cas 775, *Thiruvengadathan Aiya v. Mangayya*.

('33) 20 AIR 1933 Oudh 562 (562): 9 Luck 270: 146 Ind Cas 506 (SB), *Muzaffar Hussain v. Sharafiat Hussain*.

7. ('35) 22 AIR 1935 Lah 364 (367): 16 Lah 667: 158 Ind Cas 502 (DB), *Abdul Hussain v. Mt. Mahmudi Begam*.

8. See ('05) 29 Bom 366 (368): 7 Bom L R 308 (FB), *Balaram v. Ramkrishna*. (Decree passed under S. 396, Civil Procedure Code of 1882 in accordance with Commissioner's report—Reference made to High Court as follows: "Whether the final decree for partition not made upon an award or an agreement of the parties is liable to be stamped as an instrument of partition"—Held decree passed was a final order for effecting partition.)

9. ('05) 29 Bom (366, 368): 7 Bom L R 308 (FB), *Balaram v. Ramkrishna*.

10. ('43) 30 AIR 1943 Bom 345 (346): 210 I. C. 279 (DB), *Kersaji Dhanjibhai v. Barjorji Bhikhaji*.

11.†('43) 30 AIR 1943 Bom 345 (346): 210 I. C. 279 (DB), *Kersaji Dhanjibhai v. Barjorji Bhikhaji*.



The "final order" referred to in the definition is the final order of the lowest Court of original jurisdiction empowered to give an order for effecting a partition and is not the order passed by the highest Court of appeal<sup>12</sup>.

As a final decree in a partition suit is an instrument of partition it is required to be engrossed on a non-judicial stamp paper of the required value under Art. 45. If such a stamp paper is not supplied by the party no final decree can be drawn up and the suit will remain pending.<sup>13</sup> It has been held that the decree drawn up without a proper stamp has no existence as a decree and the proceedings taken in execution of such decree are invalid.<sup>14</sup>

But the effect of the above rulings must only be taken to be that till the decree is stamped there is no decree which can be 'acted upon', i.e., which can be executed. It is competent for the executing Court to receive the requisite stamp when an unstamped decree for partition is sought to be executed.<sup>14a</sup> Hence, it is not necessary that the decree should be drawn up afresh on the stamp paper when it is supplied by the party. If the stamp paper supplied by the party is defaced and the cause title and the names of the parties are written upon it and then it is attached to the decree as already drawn up, this will be sufficient to validate the decree with retrospective effect from the date when it was originally drawn up,<sup>15</sup> but not the proceedings taken in execution before the proper stamp paper was supplied.<sup>16</sup>

As to execution of a part of an unstamped decree in a partition suit involving several separable reliefs, see Note 6 on Art 45.

For purposes of Art. 182, Limitation Act, the date of the decree is the date on which judgment is pronounced and limitation begins to run from that date although

(14) 1 AIR 1914 Oudh 1 (18): 24 Ind Cas 643 (DB), *Suraiya Qadr v. Quasia Begam*. (Suit under O.20 R. 13, Civil Procedure Code—Held so far as final decree operated to effect partition of movable and immovable property *in specie* it would be treated as an instrument of partition.)

[See also ('79) 4 Cal 434 (437): 5 Ind App 228 (PC), *Jay Narain v. Girish Chunder*. (Suit for possession—Decree giving plaintiff a separate share of the common property—Held although suit was not actually in terms for partition the decree did effect a partition.)]

12. ('14) 1 AIR 1914 All 177 (177): 36 All 237: 23 Ind Cas 98 (FB). *In re Stamp Reference by the Board of Revenue*.

13.† ('05) 32 Cal 483 (491) (DB), *Jatindra Mohan Tagore v. Bejoy Chand Mahatap*. ('38) 25 AIR 1938 Mad 307 (312): 183 I. C. 33 (DB), *Satyanandan v. Nammayya*. 32-Cal 483, foll.)

14. ('32) 19 AIR 1932 Lah 249 (250): 135 Ind Cas 685, *Dilbagh Rai v. Mt. Teka Devi*. [See also ('36) 23 AIR 1936 Lah 1 (3): 16 Lah 901: 160 Ind Cas 206 (DB), *Makbul Ahmad v. Mt. Afzal-ul-Nisa*. (Under S. 29 (g), Stamp Act it is the duty of the Court to decide the proportion of the stamp payable by each person who desires his share separated—Article 45 is the article under

which this stamp duty is levied—It would be impossible for any of the parties to execute the decree until the stamp duty is first levied and paid.)]

[See however ('23) 10 AIR 1923 Nag 109 (110): 67 Ind Cas 310, *Raje Udujiram v. Raje Shivar*. (Decree not engrossed on a non-judicial stamp—Decree executed—Objection raised after eight years—Held it was too late to call for a decree upon a properly stamped paper as it was executed.)]

14a. ('48) 35 AIR 1948 All 375(377) (DB), *Ganesh Prasad v. Mt. Makhna*.

15.† ('10) 7 Ind Cas 94 (96) (DB) (Cal), *Rafid-Din v. Latif Ahmed*.

(42) 29 AIR 1942 Lah 260 (263): ILR (1942) Lah 307: 203 I.C. 34 (FB), *Gopi Mal v. Vidya Wanti*.

(35) 22 AIR 1935 Cal 125 (125): 154 Ind Cas 458 (DB), *Jogesh Chandra v. Mohini Mohan*. Also see S. 13 Note 5.

16.† ('42) 29 AIR 1942 Lah 260 (263): ILR (1942) Lah 307: 203 I.C. 34 (FB), *Gopi Mal v. Vidya Wanti*.

(38) 25 AIR 1938 Mad 307 (311): 183 Ind Cas 33 (DB), *Satyanandan v. Nammayya*.

But see ('48) 35 AIR 1948 All 375(318), *Ganesh Prasad v. Mt. Makhna*. [Partition decree not stamped—Requisite stamp supplied—Execution proceedings prior to supply of requisite stamp are not without jurisdiction and cannot be questioned.]



no formal decree can be drawn up until stamp paper as required by Art. 45. Stamp Act, is supplied by the party.<sup>17</sup>

See also Note 5 on section 13.

**16. "Award by an arbitrator directing a partition."**—The definitions in the Acts of 1869 and 1879 did not contain any reference to an award by arbitrators directing a partition. Duty chargeable for an award was provided for in Art. 10 of Act 1 of 1879, and in Art. 22 of Act XVIII of 1869. Under these Acts an instrument of partition was chargeable with a higher duty than an award. Hence it soon became a popular practice, when a matter of partition was referred to arbitration to make an award directing the partition and stop there and so long as such an award bore the signatures of the arbitrators only it was held sufficiently stamped as an award.<sup>1</sup> But oftentimes the award was signed by the parties also by way of their assent to such award. There was a difference of opinion as regards the effect of such signatures. In the undermentioned cases<sup>2</sup> it was held that the award became, by the act of such signing, an instrument of partition; while the undermentioned cases<sup>3</sup> held that the signatures of the parties did not affect the character of the document as an award.

In the undermentioned Bombay case<sup>4</sup> the parties made a reference on stamped paper to arbitrators to effect a division of their properties. The award was given. Subsequently the parties entered into an agreement whereby they agreed to divide the properties according to the terms of the award. The question was whether the agreement was chargeable as an agreement or as an instrument of partition as defined in S. 3 (11) of Act 1 of 1879. The argument was that the award could be filed in Court under S. 23, Civil Procedure Code of 1882 and would bind the parties and further agreement being unnecessary was chargeable only as a miscellaneous agreement and not as an instrument of partition. It was held that the agreement was an agreement to divide property in severalty and was therefore an instrument of partition.

To stop the practice adopted by parties to avoid payment of higher duty chargeable for an instrument of partition, the present definition has been so framed as to include in it "an award by an arbitrator directing a partition."<sup>5</sup>

17.† ('24) 11 AIR 1924 Cal 351 (352) : 72 Ind Cas 646 (DB), *Kishori Mohan v. Provash-chandra*.

('43) 30 AIR 1943 Mad 650 (651) : ILR (1944) Mad 266 : 212 Ind Cas 619 (DB), *China Venkatappa v. Peda Venkatappa*. (Default or deliberate refusal to produce stamp paper within period allowed for execution cannot operate to overrule an express provision of Limitation Act.)

S2 (15)—NOTE 16

1. ('22) 9 AIR 1922 All 283 (284) : 69 Ind Cas 807, *Syed Mohammad Hameed v. Manzur Husain*.

2.† ('85) 9 Bom 50 (51) (SB), *Amarsi v. Dayal*. ('22) 9 AIR 1922 All 283 (284) : 69 Ind Cas 807, *Syed Mohammad Hameed v. Manzur Hasan*.

(1900) 1900 Pun L R No. 114, p. 306 (306), *Ratanchand v. Ghasita Mal*.

[See also ('14) 1 AIR 1914 Cal 273 (274) : 20 Ind Cas 860 (DB), *Tek Lal Singh v. Sripati chowdhury*. (Case under Registration Act of 1877.)]

3.† ('93) 6 C P L R 95 (97), *Jagannath, Shamlal v. Rambux*.

('14) 1 AIR 1914 Lah 524 (526) : 1915 Pun Re No. 29 : 27 Ind Cas 489 (DB), *Sukh Dial v. Mani Ram*.

[See also ('06) 1906 Pun L R No. 160, p. 532 (533) (DB), *Gulab Singh v. Mohar Singh*. (Case under Registration Act of 1877.)]

4. ('91) 15 Bom 677 (681) : 1891 Bom P J 28, *In re Vasanji Haribhai*.

Also see Note 5.

5.† ('22) 9 AIR 1922 All 283 (284) : 69 Ind Cas 807, *Mohammad Hammed v. Manzur Husain*.

† ('06) 1906 Pun L R No. 160, p. 532 (533) (DB), *Gulab Singh v. Mohar Singh*.

('24) 11 AIR 1924 Oudh 240 (240) : 73 Ind Cas 336, *Emperor v. Putto Lal*.

('28) 15 AIR 1928 Mad 1181 (1181) : 52 Mad 1 : 115 Ind Cas 824 (FB), *Collector of Vizagapatam v. Krishna Chandra*.

('18) 5 AIR 1918 Mad 443 (441) : 42 Ind Cas 365 (DB), *Naga Bhushanam v. Pitchayya*.



The words used in connection with an award of arbitrators are "directing a partition" and not "effecting a partition" used in connection with a final order of a Revenue-authority or Civil Court. The reason is that arbitrators have no power to do more than direct a partition and therefore even if the arbitrators go further and define the manner in which the partition should be made it has no more binding force.<sup>6</sup>

"Lease."

also—

\*(16) "lease" means a lease of immovable property, and includes

- (a) a patta ;
- (b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property ;
- (c) any instrument by which tolls of any description are let ;
- (d) any writing on an application for a lease intended to signify that the application is granted ;

### Notification.

Exploring and prospecting licences are not leases for purposes of the definition in S. 2, sub-s. (16) of the Indian Stamp Act, 1899. A licence does not become a lease, merely because a rental is reserved. These licences are chargeable as agreement with a stamp duty under Art. 5 (b) (see now Art. 5 (c) of Sch. I and 1A to the Indian Stamp Act, 1899—Government of India Order No. 1677-S. R., dated 10-4-1902, to the Government of Madras received with Bengal Government Order No. 330-T. R., dated 2-5-1902.

### Synopsis

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|   | 34. Duty payable. See Sch. I, Art. 35.                             |

1. **Legislative changes.**—There was no definition of "lease" in the Act of 1862. Section 3 (15) of the Act of 1869 defined "lease" as "including every instrument (not being a counterpart) by which one person lets or agrees to let or takes or agrees to take, immovable property, to or from another."

Section 3 (12) of the Act of 1879 defined "lease" as in this sub-section.

\*[1879—S. 3 (12) : 1869—S. 3 (15).]

6. ('07) 31 Bom 68 (71) : 8 Bom LR 869, *Kalidas v. Tribhuwandas*.



**2. Scope of definition.**—Section 105 of the Transfer of Property Act defines a “lease of immovable property.” This sub-section expressly provides that “lease” means a “lease of immovable property.” Hence an instrument which is a lease as defined by S. 105 of the Transfer of Property Act will also be a lease for the purpose of this Act.

But this sub-section provides that the instruments enumerated in cls. (a) to (d) will also be “included” within the term “lease”. Hence, an instrument will be a lease for the purpose of this Act although it does not fall within the definition in S. 105 of the Transfer of Property Act, if it is covered by any of the categories mentioned in cls. (a) to (d).<sup>1</sup>

In Salmond's *Jurisprudence*, 9th Edn., 1937, p. 597, it is said that the term “lease” is “not wholly inapplicable “to chattels. But the primary meaning which is assigned by this sub-section to the term “lease” expressly confines it to a letting of *immovable* property.

It may be noted that the Registration Act also adopts an analogously enlarged definition of a “lease” and includes within the definition “a counterpart, *kabuliyat*, an undertaking to cultivate or occupy and agreement to lease.” See S. 2 (7) of the Registration Act.

It will be seen that a counterpart will be a “lease” under the Registration Act, while it will not be one under this Act.

**3. Agreement to lease.**—The present definition, unlike S. 2 (7) of the Registration Act, does not include within the meaning of lease, an agreement to lease. But an agreement to let or sub-let is liable to be stamped as a lease under Art. 35, so that, for the purposes of the Stamp Act as well as of the Registration Act, it may be said that a lease includes an agreement to lease.<sup>1</sup>

But under both the Acts, the agreement to lease must be a document which effects an *actual demise*. In other words, it must relate to some document that creates a *present* and *immediate* interest in the land.<sup>2</sup> In *Hemanta Kumari Debi v. Midnapur Zamindari Co.*<sup>3</sup> which was a case under the Registration Act, the Judicial Committee of the Privy Council observed :

“An ‘agreement for a lease’ which a lease is by the statute declared to include must in their Lordships’ opinion, be a document which effects an actual demise and operates as a lease. They think that Jenkins, C. J., in the case of *Panchanana*

#### Section 2 (16)—NOTE 2

1. (\*33) 20 AIR 1933 All 735 (737) : 55 All 874 : 145 Ind Cas 674 (FB). *In re Barmah Oil Co.*
- (39) 26 AIR 1939 Lah 531 (533) : ILR (1939) Lah 201 : 185 Ind Cas 227 (DB), *Boor Ahmad v. Mahmud Ali*.
- (45) 32 AIR 1945 Nag 178 (179) : ILR (1945) Nag 1928 *Lokmat Motor Service v. New Lokmat Lodging*. (The definition of lease as given in the Stamp Act is an inclusive definition and is wider than that given in the Transfer of Property Act.)

#### S2 (16)—NOTE 3

1. (28) 15 AIR 1928 Bom 553 (554) : 53 Bom 1 : 112 Ind Cas 758 (DB), *In re Maneklal Manilal*.

2. (21) 8 AIR 1921 Cal 127 (128) : 64 I.C. 747 (DB), *Harinath Bandopadhyaya v. Promotha Nath Roy*.
- (21) 8 AIR 1921 Mad 72 (73) : 44 Mad 399 : 62 Ind Cas 354 (DB), *Swaminatha Mudliar v. Ramaswami Mudliar*.
- (10) 37 Cal 808 (811) : 6 Ind Cas 443 (DB), *Panchanan Bose v. Chandi Charan Misra*.
- \*(19) 6 AIR 1919 P C 79 (80) : 46 Ind App 240 : 47 Cal 485 : 53 Ind Cas 534 (PC), *Hemanta Kumari v. Midnapur Zamindari*.
- (20) 7 AIR 1920 Bom 226 (227) : 54 Ind Cas 134, *Secretary of State v. Mohd. Yusuf Ismail*.
- (28) 15 AIR 1928 Bom 553 (555, 557) : 53 Bom 1 : 112 Ind Cas 758 (DB), *In re Maneklal Manilal*.
3. (19) 6 AIR 1919 P C 79 (80) : 47 Cal 485 : 46 Ind App 240 : 53 Ind Cas 534 (PC).



*Basu v. Chandi Charan*<sup>3a</sup> correctly stated the interpretation of S. 17 in this respect. The present agreement is an agreement that, upon the happening of a contingent event at a date which was indeterminate and, having regard to the slow progress of Indian litigation, might be far distant, a lease would be granted. Until the happening of that event it was impossible to determine whether there would be any lease or not. Such an agreement does not, in their Lordships' opinion, satisfy the meaning of the phrase 'agreement for a lease,' which in the context where it occurs and in the statute in which it is found must in their opinion relate to some document that creates a present and immediate interest in the land."

Thus, for the purpose of effecting an agreement of lease it is necessary that the premises to be let should be in existence.<sup>4</sup> Similarly, an agreement for a lease whereby no rent is reserved and no premium paid or money advanced is not included in Art. 35, and does not therefore require a stamp as a lease.<sup>5</sup>

See also Notes on Sch. 1, Art. 35.

**4. Lease and licence—Distinction.**—In order that an instrument may be a lease under clause (a) of this sub-section, it must be determined whether it is not a mere *licence*. A mere licence although it may confer a right to *possession* of immovable property will not be a *lease*. A licence is a merely *personal* right while a lease is an *interest* in immovable property. So it has to be seen in each case whether the instrument creates an *interest* in immovable property, or only a *personal* right.<sup>1</sup> See A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., S. 105, Notes 13 to 18 for a thorough discussion of the subject and the tests of distinction between a lease and a licence.

But if an instrument falls within cl. (b) of the sub-section as being an undertaking in writing to cultivate, occupy or pay or deliver rent for immovable property, it will be a lease for the purpose of this Act although the right created only amounts to a licence.<sup>2</sup> The words of cl. (b) do not imply that an instrument falling under them will not be a lease unless an *interest* in immovable property is created and a lease in the strict sense of the term has been granted.

Exploring and prospecting licences are not leases for purposes of the definition in this sub-section. A licence does not become a lease merely because a rental is reserved. These licences are chargeable as agreements under Art. 5 (c) of Sch. I.

3a. ('10) 37 Cal 808 (811): 6 Ind Cas 443 (DB).

4. ('28) 15 AIR 1928 Bom 553 (555): 53 Bom 1: 112 Ind Cas 758 (DB), *In re Maneklal Manilal*.

5. ('16) 3 AIR 1916 Pat 250 (251): 1 Pat L Jour 366: 36 I. C. 175 (DB), *Mt. Sunder Kær v. Emperor*.

Also see Section 62 Note 15 and Article 35 Note 3.

#### S2 (16)—NOTE 4

1. ('25) 12 AIR 1925 Mad 434 (435, 436): 48 Mad 368: 86 I.C. 688 (FB), *Board of Revenue v. Agent S. I. Ry. Co.* (It is not a mere question of words but of substance. The mere calling a document a licence would not affect the question; but in arriving at a conclusion where the terms are not clear, one has to see what the circumstances are to judge the intention of the parties. It is relevant to consider what the rights of the

parties were and what the object of the agreement was. The mere fact that there are restrictive covenants would not by itself make a lease a licence, if the other terms are clear; but in considering what the intention of the parties was, it is relevant to see what control one party has over the property on which another party is allowed to do certain things.)

†('33) 20 AIR 1933 All 735 (737): 55 All 874: 145 Ind Cas 674 (FB), *In re Burmah Oil Co.*

2. See ('33) 20 AIR 1933 All 735 (736): 55 All 874: 145 Ind Cas 674 (FB), *In re Burmah Oil Co.*

Also see Note 26.

3. ('31) Beng S M Vol. I p. 13 (13). (Government of India Order No. 1677 S. R., dated the 10th April, 1902, to the Government of Madras, received with Bengal Government Order No. 330 T. R., dated the 2nd May 1902.)

('40) Bihar S M p. 94 (94), (Do.)



5. Lease and conveyance—See Note 6.

6. Lease and sale—**Distinction.**—Sometimes a question may arise as to whether an instrument is a lease or a sale-deed. For instance, where a permanent lease is granted in consideration of a premium it may be a matter of considerable difficulty to distinguish it from a sale. The test is whether the interest in the *fee simple* is transferred or only the right to possession. The reservation of something described as “rent” may be a test but it is not conclusive. See for full discussion A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., S. 54, Note 11 and S. 105, Notes 6 and 42. See also the undermentioned cases.<sup>1</sup>

Even a transfer of land for a limited period may be only an *assignment* of the land for a term and not a lease; see Note 9.

7. Lease and usufructuary mortgage—**Distinction.**—A lease of immovable property may be granted for a *premium*, i.e., in lieu of a lump sum paid by the lessee to the lessor in advance. In such a case, the lessee will be entitled to remain in possession for the stipulated period. A usufructuary mortgage also may be granted on the terms that the mortgagee is to remain in possession of the property and enjoy the usufruct thereof for a certain period in lieu of the money advanced by him and the interest thereon. Thus, to both such cases there is the transfer of a right to possession of immovable property for a certain period in consideration of a sum of money paid by the transferee to the transferor. Hence, in such cases, the question is bound to arise whether the instrument is a lease or mortgage-deed.

The question has to be decided on the facts and circumstances of each case. The main test is whether the money paid is a *debt* advanced and whether the transfer of possession is by way of *security*. In such a case the instrument will be a mortgage-deed, howsoever it may be described. Where there is no *debt* and the transfer is not by way of *security*, the instrument will be a lease. The undermentioned are illustrative cases.<sup>1</sup> (See also A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., S. 105, Note 67 and S. 58, Note 36.)

#### S2 (16)—NOTE 6

1. ('42) 29 AIR 1942 Oudh 151 (155): 17 Luck 401: 197 Ind Cas 665, *Bhondu Singh v. Mahadeo Singh*. (In determining whether a deed is a sale or a lease, the real nature of the document has to be seen. Price is an essential element of sale as commonly understood and as defined in T. P. Act and equally commonly known is the word “Premium” or “nazrana” when the transaction is one of lease. In a sale there is no recurring liability of payment of rent while in a lease there is such a liability.)

('27) 14 AIR 1927 Oudh 161 (162): 101 Ind Cas 193 (DB), *Oudh Behari v. Rameshwar Singh*. (Do.)

†('41) 28 AIR 1941 Oudh 12 (14): 190 Ind Cas 782, *Maharaja Pande v. Kali Din Pande*. (In determining the question whether a document is really a lease or a sale the Court should ascertain the real nature of the transaction after stripping it of the disguises by which the true nature is sought to be concealed. In this case a document purporting to be a lease was held to be a sale.)

('30) 17 AIR 1930 Oudh 300 (301): 5 Luck 721: 123 Ind Cas 53, *Goapl Sahu v. Nand*

*Kumar Singh*. (In this case the document purported to be a perpetual lease of an occupancy holding transferring all the rights of the occupancy tenant without any right of re-entry for ever to the lessee on payment of a sum of Rs. 350 and an annual rent which was exactly equivalent to the land revenue due to Government. *Held* that the transaction was a sale and not a lease.)

('88) 1888 Bom P J 267 (DB), *Krishnarav v. Yesu*. (Under a document purporting to be a lease the defendant took the land from the plaintiff to hold as his tenant for one year and agreed among other conditions to pay him Rs. 10 as rent. The document also recited the previous sale of the land by the defendant to the plaintiff. *Held*, that the document was a lease and a lease does not become a conveyance because it recites the previous sale of the land.)

#### S2 (16)—NOTE 7

1. ('97) 24 Cal 272 (279): 23 Ind App 158 (PC), *Bengal Indigo Co. v. Roghobur Das*.

('41) 28 AIR 1941 Pat 296 (298): 193 Ind Cas 533 (DB), *Gulabchand v. Ram Kumar*.

('82) 6 Bom 674 (680): 7 Ind Jur 96 (DB), *Gopal Sitaram v. Desai*.



8. **Lease and mortgage contained in same deed.**—Where a lease and a mortgage are contained in the same deed, it must be seen whether they are “distinct matters” within the meaning of S. 5. If they are such distinct matters, then, the instrument will be chargeable with duty both as a mortgage and a lease.

If the lease and mortgage are not “distinct matters”, then, S. 6 will apply and the instrument will be chargeable as a mortgage-deed, the duty on a mortgage-deed being higher than that on a lease-deed.

As to what are “distinct matters” see Notes 4 and 5 on S. 5. The following are illustrative cases :

Where a document containing a lease also contained an agreement by the lessees hypothecating certain other property belonging to them for the purpose of securing the payment of the agreed rent the document was held to be a *mortgage-deed* and liable to be stamped as such.<sup>1</sup>

An instrument recited that A was indebted to B and that A leased a certain property to B. It was further provided that from the rent of each year a portion should be deducted in payment of A's debt to B. It was held that though the arrangement intended to be effected was partly a lease and partly a usufructuary mortgage, yet the instrument came within the provisions of S. 7, para 2 of the Stamp Act of 1879 (now S. 6) and should be stamped as a mortgage only.<sup>2</sup>

By a document termed as a usufructuary mortgage, A in consideration of a loan received from B agreed that the property should remain in possession of B for several

(25) 12 AIR 1925 Pat 319 (320) : 83 Ind Cas 192 (DB), *Mathura Pandey v. Chandrika Rai*.

(23) 10 AIR 1923 Pat 122 (128) : 2 Pat 217 : 68 I.C. 394 (DB), *Maharaj Kesho Prasad v. Chandrika Prasad*.

(98) 21 Mad 358 (360) (FB), *Reference under Stamp Act, S. 46*. (A document styled a lease, under which, in consideration of money advanced, the claimant under it was only to enjoy certain specified lands for a certain number of years, but which contained nothing as to the repayment of the borrowed amount, nor provided for payment of any rent as such, was held to be liable to stamp duty, not as a lease, but as a usufructuary mortgage, under which the rents and profits had been estimated to be sufficient to satisfy both principal and interest, so that no subsequent accounting might become necessary on either side.)

(35) 22 AIR 1935 Pat 360 (364) : 158 Ind Cas 162 (DB), *Parmeshwar Rai v. Ramrudra Prasad*. (A *zarpeshgi* lease may be a mortgage as well. No hard and fast rule can be laid down for deciding whether a particular transaction is a lease pure and simple or whether it is also a mortgage. The *important criterion* is whether there is a loan and the property transferred is a security for the payment of the principal or interest of the loan.)

†(38) 25 AIR 1938 Pat 35 (36, 37) : 172 Ind Cas 935 (DB), *Dildar Hussain v. Sheikh Sad-dip*. (Held mortgage.)

(84) 7 Mad 203 (206) (FB), *Reference under Stamp Act S. 46*. (Held that although the parties may have described the transaction as a mortgage, it was in fact a lease for nine years with a reserved rent of Rs. 35. The stamp duty leviable is that for a lease with a premium. It was not a usufructuary mortgage as the amount of debt in consideration of which the lease was given was *satisfied and not secured* when possession was given. Moreover under the terms of the deed the property could not be redeemed on payment of debt as would be the case if the transaction were a usufructuary mortgage—Distinguished in 21 Mad 358 (FB).)

(28) 15 AIR 1928 Pat 410 (412) : 7 Pat 690 : 110 Ind Cas 469 (DB), *Umeshwardhari Singh v. Neman Singh*. (Held mortgage.)

(39) 26 AIR 1939 Pat 265 (266, 267) : 180 Ind Cas 95, *Jageshar Singh v. Alakh Narain*. (Held lease.)

(19) 6 AIR 1919 Mad 322 (324) : 41 Mad 959 : 49 Ind Cas 291 (DB), *Meenakshisundara Mudliar v. Rathnasami Pillai*.

#### S2 (16)—NOTE 8

1. (95) 17 All 55 (56, 57) : 1894 All W N 204 (FB), *Reference under Act No. 1 of 1879*. (Second paragraph of S. 7, Act of 1879 corresponding to S. 6, now held to apply.)

Also see S. 2 (17) Note 9 and S. 6 Note 7.

2. (82) 8 Cal 254 (258) : 10 Cal L R 33 (SB), *In the matter of Reference from Board of Revenue No. 1004 of 1881*.

Also see S. 6 Note 7



years till the liquidation of the debt. B was to pay Rs. 99 to A in a lump sum. It was held that the document was a usufructuary mortgage and not a lease.<sup>3</sup>

See also Note 31.

**9. Assignment of land for a term.**—Under an instrument described as a lease B took a certain land from A and was entitled to exclusive possession of the land for ten years. His obligation was to plant and rear fifty thousand casuarina trees. The trees when grown up were to be cut at the expense of both the parties and A was to be entitled to a moiety of the proceeds. There was no date or period fixed for that cutting. It was doubted whether the half of the proceeds of the wood cut which A was entitled to was either rent or premium. It was considered that the document was rather an assignment of the land for a term in consideration of recovering half the proceeds of the trees reared on the land when they were fit for cutting.

**10. Memorandum of lease already granted.**—A printed tabular form was issued to a newly created tenant. The form gave the name of the new tenant, a description of the land leased, the rent, the right, viz., the occupancy, and the sambat year from which the tenancy ran, while the heading referred to the case number and the year. The form, however, did not mention the nazarana paid as premium which was paid for the lease. It was held that this did not create a lease but was only a memorandum of the transaction granting a tenancy which had already been effected in favour of the tenant. It did not come under S. 2 (16) of the Stamp Act.<sup>1</sup>

See also Note 9.

In the undermentioned case<sup>2</sup> a letter written by a tenant to his landlord mentioned that at a personal interview between him and the landlord the rent was settled at Rs. 68 and that he agreed and bound himself to pay it regularly. He also agreed to use the premises for residential purposes only and not to sub-let them without the written permission of the landlord. It was held that the document was not a mere record of an antecedent transaction but contained binding undertakings on the part of the tenant and was therefore a lease.

**11. Entry in book.**—Where under a verbal agreement the lessee has entered upon possession, an entry in the lessor's book showing the extent of the holding and the amount of rent payable does not amount to a lease or an agreement for a lease although such entry is signed by the lessee.<sup>1</sup> Such an entry amounts only to an admission.

**12. Admission of lease.**—An admission in writing by the lessee that he is a lessee of certain lands, showing the extent of the holding and the rent payable is not a lease or agreement to lease and so is admissible in evidence without stamp or registration.<sup>1</sup>

**13. Doult darkhast.**—See Note 26.

3. ('71) 7 Beng L R 14 (17) : 15 Suth W R 331 (DB), *Ishan Chunder v. Sooja Bebee*.

S2 (16)—NOTE 9

1. ('18) 5 AIR 1918 Mad 1066 (1068) : 39 Ind Cas 448 (DB), *Seshayya v. Venkata Subhaya*. (Per Srinivasa Iyengar J.)

S2 (16)—NOTE 10

1. ('39) 1939 Nag L Jour 404 (405), *In re Manager Court of Wards*.

2. ('48) 35 AIR 1948 Bom 336 (336,337) : IRL (1948) Bom 342 (DB), *Collector Superintendent of Stamps, Bombay v. Laxmibai*.

S2 (16)—NOTE 11

1. ('80) 5 Cal 864 (865) : 6 Cal L R 286 (DB), *Narain Coomary v. Ramkrishna Dass*. (Stamp or registration not necessary.)

S2 (16)—NOTE 12

1. ('80) 5 Cal 864 (865) : 6 Cal L R 286 (DB), *Narain Coomary v. Ramkrishna Dass*. (1837) 150 E R 967 (967) : 2 M & W 768 (769) : 6 L J Ex 188, *Barry v. Goodman*.

[See also (1843) 152 E R 888 (889) : 11 M & W 465 (468) : 12 L J Ex 359, *Eagleton v. Gutteridge*.

(1840) 113 E R 615 (616) : 11 Ad & E 792 (795) : 9 L J Q B 177, *Doe d. Frankis*



14. **Renewal clause.**—As to whether separate stamp duty is payable in respect of the renewal clause in a lease see Note 7 on S. 5.

15. **Agreement to lease in petition of compromise.**—Where a petition of compromise in a suit merely contains a recital of a previous oral agreement to lease, the petition does not require a stamp as it is in itself not an agreement for lease but simply an evidence of an oral agreement to lease.<sup>1</sup>

16. **Correspondence containing lease.**—Where the correspondence containing an agreement for lease is complete in itself independently of the draft of the lease and the engrossed lease, the correspondence requires a stamp as a lease even though the engrossed lease is properly stamped.<sup>1</sup>

A letter written by a tenant to his landlord which was not a mere record of an antecedent transaction but which contained a binding undertaking to pay rent was held to be a lease.<sup>2</sup>

17. **Sub-lease.**—Under Art. 35 an under-lease or sub-lease and an agreement to sub-let are liable to be stamped as a "lease".

Apart from this, there is nothing in the definition of a lease of immovable property to exclude a sub-lease or under-lease.<sup>1</sup>

18. **Lease by auction.**—A bid-sheet, or *dak fard* showing the bids made at an auction of land for settlement but not containing some of the important terms such as the period of settlement and the conditions of the settlement was held not to be a lease, the same not having been intended to be delivered as a document of title.<sup>1</sup>

19. **Document varying terms of lease.**—After a complete lease has been executed, stamped, and registered, if another document is prepared and executed with a view to alter the first, and substitute new terms so far as the rent is concerned, it has been held that the new document requires, under the Stamp Act, to be itself stamped with the stamp provided for a lease.<sup>1</sup>

See Notes on S. 14. See also A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., S. 105, Note 11.

*v. Frankis.* (Paper not mere acknowledgement or attornment of tenancy and forming contract or evidence of a contract between landlord and tenant requires stamp.)]

S2 (16)—NOTE 15

1. ('08) 12 Cal W N 59 (60) (DB), *Pitambar Gain v. Uddhab Mondol*.

S2 (16)—NOTE 16

1. ('90) 17 Cal 548 (556), *A. C. Boyd v. A. Kreig*.

[See also ('23) 10 AIR 1923 Cal 524 (526) : 72 Ind Cas 98 (DB), *Bijoi Chandra Singh v. Howrah Amta Light Ry. Co. Ltd.* (Lessee agreeing to continue after current term.)

2. ('48) 35 AIR 1948 Bom 336 (336, 337) : ILR(1948) Bom 342 (DB), *Collector and Superintendent of Stamps Bombay v. Laxmibai*.

S2 (16)—NOTE 17

1. ('69) 4 Mad H C R 153 (161) (B), *Saminathaiyan v. Saminathaiyan*. (The law does

not prohibit any tenant placing himself in the correlative position of landlord to a sub-tenant and the question whether such a position has been acquired depends in each case upon the tenant's right in the land and the contract made. If a tenant being at liberty to part with his possession and enjoyment does so in consideration of a certain rent but not to the whole extent of his legal interest, so that the right of possession will at once revert in him or his representative on the termination of the sub-contract, he stands in the relation of landlord during the subsistence of such contract.)

S2 (16)—NOTE 18

1. ('26) 13 AIR 1926 Pat 487 (487, 489) : 98 Ind Cas 374 (DB), *Rameshwar Singh v. Shaik Kitab Ali*. (Lease by *mirassidar* who is a 'tenant' under the Government.)

S2 (16)—NOTE 19

1. ('73) 20 Suth W R 36 (37) (DB), *Bijjnath Dutt Jha v. Putsohee Dabaim*. (Case under Act of 1862.)



**20. Covenants in a lease.**—As to whether these are separately chargeable with stamp duty see Note 7 on S. 5.

**21. “Immovable property.”**—Under this sub-section, a lease means only a lease of *immovable property*.

The Legislature of the country has adopted the division of property into movable and immovable, and not the technical division into *real* and *personal* property recognised by the English law. In *Fattehsangji v. Dessai*<sup>1</sup> which was a case arising under the Limitation Act of 1859, their Lordships of the Privy Council observed:

“Their Lordships cannot think that the former term (that is immovable property) is identical with ‘lands or houses.’ They conceive that the word ‘immovable’ was used as something less technical than ‘real,’ and that the term ‘immovable property’ comprehends certainly all that would be real property according to English law and possibly more.”

The term “immovable property” has been defined by S. 3, sub-s. (25) of the General Clauses Act, 1897, as including “land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth.” According to the definition growing crops would be immovable property.<sup>2</sup>

Where standing timber was to be cut down and removed and not to be maintained in the forest, it was held that it was movable property and not immovable property. Hence, the instrument conferring the right was not a “lease” for the purpose of this Act.<sup>3</sup> Similarly, an instrument granting an exclusive right to manufacture and sell liquor is not a lease of immovable property.<sup>4</sup>

A hereditary right to *toda giras* payable by an inamdar out of the rents of a village is an interest in immovable property.<sup>5</sup>

It may be noted that the Transfer of Property Act, S. 3 has a special definition of immovable property. According to this, ‘immovable property’ does not include ‘standing timber, growing crops or grass.’ This definition will not apply to the Stamp Act.

**22. Lease of land revenue, rent, etc.**—A lease or farm of land *revenue* is a lease of *immovable property* as the right to revenue is a benefit to arise out of land.<sup>1</sup> Hence,

(‘40) 27 AIR 1940 Mad 379 (382) : ILR (1940) Mad 487 : 188 I.C. 136 (SB), *Sivaganga v. Periasami Pillai*. (Agreement which varies rent payable by lessee requires registration and stamp : 25 Mad 603 and 37 Cal 293 affirmed on appeal by Privy Council in 41 Cal 493 at p. 506 : 40 Ind App 223 (PC) follow od.)

Also see S. 4 Note 5.

#### S2 (16)—NOTE 21

1. (‘74) 1 Ind App 34 (52) : 13 Beng L R 254 (PC).

Also see S. 2 (16) Note 5.

2. (‘70) 5 Beng L R 194 (194) : 13 Suth W R 275 (DB), *Gopal Chunder Biswas v. Ramzan Sirdar*. (This view is not affected by the fact that, for the purposes of Registration Act, the Legislature has dealt with growing crops as though they constituted movable property.) [See also (‘33) Mad S M p. 106. (Citing G.O. 1227, Revenue, 27th April 1917; B. P. 795 R.,

Mis., 26th May 1917; G. O. 204, Revenue (Special), 2nd February 1920—Lease of minor forest products was held to be a lease on same principle—But agreements with forest panchayatdars in the form printed in G. O. No. 1801, Revenue, dated the 8th August 1916, inasmuch as they do not confer on the panchayat any right to exclusive possession, are not leases and are liable to stamp duty under Article 5 (c) of Schedule 1.)]

3. (‘31) 18 AIR 1931 All 392 (392) : 133 Ind Cas 157 (FB), *In re Mahant Raj Balangir*.

4. (‘80) 2 All 654 (659) : 5 Ind Jur 264 (FB), *Reference by Board of Revenue*.

5. (‘74) 1 Ind App 34 (53) : 13 Beng L R 254 (PC), *Fattehsangji v. Desai*.

#### S2 (16)—NOTE 22

1. (‘81) 3 Mad 342 (345) (FB), *Collector of Tanjore v. Ramasamier*. (“Ijara muchalka” is a lease of land revenue—Case under Act of 1869.)



such a lease is covered by this definition. Similarly, there can also be a lease of the right to rent or other proprietary rights and such lease also will be within this definition.<sup>2</sup>

**23. Clause (a)—Patta.**—Patta is a deed of lease i.e. a document given to the cultivator specifying the conditions on which the lands are held and the value or proportion of the produce to be paid to the person from whom the lands are held. Patta, as commonly understood, is a lease of land for cultivation as distinguished from a lease or farm of land revenue.<sup>1</sup>

**24. Kabuliyat.**—The term “Kabuliyat”<sup>1</sup> is defined in *Wilson’s Glossary* as follows :

“A written agreement; especially one signifying assent, as the counterpart of a revenue lease, or the document on which a payer of revenue, whether to the Government, the Zamindar, or the farmer, expresses his consent to pay the amount assessed upon his land.”

But, in ordinary parlance, the term is used in Indian languages for the document executed by a lessee of agricultural land containing the terms of the lease, the period of the lease usually being one year.<sup>1</sup>

Such a document will not be a lease under S. 105 of the Transfer of Property Act. (See A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., S. 105, Note 9.) But it is expressly included in the definition of a lease under this sub-section.<sup>2</sup>

It is only after the lessor has agreed to let the property that a Kabuliat is executed. Hence a letter written by a lessee holding over offering to take a lease on certain terms is not a Kabuliat within the meaning of this sub-section.<sup>3</sup>

See also note 28.

**25. Ijara.**—An *Ijara* is a lease of land revenue which must be considered to be immovable property as being a benefit to arise out of land. Hence, an *ijara* or *ijara muchalka* is a lease of immovable property.<sup>1</sup>

**26. Undertaking in writing to cultivate, etc.**—A lease is a *transfer* of an interest in immovable property. Hence, primarily, it is an act of the *lessor*. But

2. ('81) 3 Mad 342 (344, 345) (FB), *Collector of Tanjore v. Ramasamier*. (An “ijara” may mean a lease of lands, but it is more frequently used as a lease or farm of land revenue, rent or other proprietary rights as distinguished from a patta or lease of land for cultivation—Per Turner C. J.) [See also ('30) 17 AIR 1930 Bom 165 (167) : 126 Ind Cas 872 (DB), *Sherif Dadumiyaji v. Emperor*. (Where a sole tenant has allowed other persons to occupy parts of the premises and recovers money or any other consideration from them in respect of such occupation, whether it be called rent or compensation for use and occupation, he would be a rent farmer.)]

S2 (16)—NOTE 23

1. ('81) 3 Mad 342 (344, 345) (FB), *Collector of Tanjore v. Ramasamier*. [See also ('23) 10 AIR 1923 PC 217 (222) : 82 Ind Cas 879 (PC), *Srinath Ray v. Partap Udai Nath*. (Patta is granted by the Zamindar as a title-deed to the tenant.)]

S2 (16)—NOTE 24

1. See ('23) 10 AIR 1923 PC 217 (222) : 82 Ind Cas 879 (PC), *Srinath Ray v. Partap Udai Nath*. (“A *Kabuliyat* predicates a patta. A patta is granted by the Zamindar as a title to the tenant. The *Kabuliyat*, as its name implies, is a mere acknowledgment, an engagement by the tenant to carry out the terms of the patta.”)

2. ('05) 8 Oudh Cas 197 (198) (DB), *Bhopal v. Chhatar Singh*.

('88) 1888 Bom PJ 41 (DB), *Patel Vahalabhai Jorabhai v. Sayyad Mussamiya*.

3. ('47) 34 AIR 1947 Oudh 43 (43) : 21 Luck 575 : 227 Ind Cas 94 (DB), *Suiti Devi v. Benarsi Das*.

S2 (16)—NOTE 25

1. '81) 3 Mad 342 (345) (FB), *collector of Tanjore v. Ramasamier*.



by virtue of the special provisions of cl. (b) an undertaking by the *lessee* or other person who takes up the land is expressly included within the definition of a "lease" for the purpose of this Act. In this respect, this sub-section resembles S. 2 (7) of the Registration Act.

The undertaking must be in writing and must be to cultivate, occupy, or pay or deliver rent for immovable property. The word "undertaking" means an accepted undertaking so as to give to the tenant a right or interest in the land and not an undertaking to take up the land if the owner should at some future time desire it.<sup>1</sup> In such a case there is only an *offer* to take up the land. Thus, a mere petition asking for a lease is not an *undertaking* within this clause and is not a lease.<sup>2</sup>

Hence, a *doul darkhast*, if it amounts to nothing more than proposal by a tenant to pay a certain rent for a certain land, does not amount to a lease or an agreement to lease. But if it is accepted in writing by the landlord, it is a different matter because it would then amount to a complete offer by the tenant and an acceptance by the landlord of the terms of the proposed lease.<sup>3</sup>

By an instrument the party executing it agreed to take land for ten years rent free and to surrender it at the end of that term, but if he overheld, to pay Rs. 100 *per annum* in respect of land so long as he overheld. It was held that the instrument was a lease.<sup>4</sup> A document purporting to be a contract to cultivate land on payment of a share of the produce commonly referred to as a "barge lease" is a lease.<sup>5</sup> Deeds executed either on behalf of local bodies or by contractors in respect of markets, slaughter houses, cart stands or other immovable property belonging to local bodies are leases falling under S. 2 (16).<sup>6</sup>

A document executed by a lessee covenanted that he would take certain premises from the lessor, make certain alterations in the premises at his own cost, pay a certain amount a month as rent and the period of occupation was fixed as five years and it was provided that if he did vacate the premises within five years he would be liable for the rent of five years. It was held that the document was a lease as well as an

## S2 (16)—NOTE 26

1. ('79) 3 Bom 21 (22) (DB), *Apu Budgavda v. Narhari Annajee*.  
(1940) 27 AIR 1940 Mad 379 (382) : ILR (1940) Mad 487 : 188 IC 136 (FB), *Sivaganga v. Periasami Pillai*. (Undertaking by the tenant to accept a patta if a patta be drawn up in accordance with certain terms is merely an offer by the tenant and not a completed agreement. It does not therefore require stamping.)
2. ('47) 34 AIR 1947 Oudh 43 (43) : 21 Luck 575 : 227 Ind Cas 94, *Suiti Devi v. Benarsi Das*. (Lessee holding over writing a letter to lessor informing that he agreed to continue the lease for a period of three years provided a formal lease is executed on old terms.—Held on construction of document that it was neither *qabuliat* nor agreement but letter offering to take lease on certain terms  
(1970) 14 Suth W R 178 (179) (DB), *Mt. Shama Keshee v. Mt. Raj Kissur*.  
(1972) 17 Suth W R 509 (510) (DB), *Bibee Meheroonissa v. Abdul Gunee*.  
(1970) 14 SUTH W R 334 (335) (DB), *Choonee Mundur v. Chundee Lall Das*.  
Also see Note 33.

3. ('81) 7 Cal 708 (709) : 10 Cal L R 127 (FB), *Maharaja Luchmissur Singh v. Mt. Dakho*. (Held that the *douls* in question contained only a portion of the terms upon which the new lease or settlement was to be granted and were neither leases nor agreements for leases within the meaning of the Registration Act.)  
(1981) 7 Cal 717 (718) (DB), *Lall Jha v. Negroo*. [See also (1972) 17 Suth W R 509 (509) (DB), *Bibee Meheroonissa v. Abdul Gunee*. (A *dowl-darkhast* is only a preliminary to a lease and is admissible to show what had been the negotiation between the parties. If no variation of the proposals contained in it can be shown, the rate of rent must be taken to be that mentioned in it.)  
(1825) 107 E R 879 (880) : 3 B & C 665 (667, 668), *Drant v. Brown*. (A proposal in writing to take a lease which is accepted orally does not require stamp.)]
4. ('80) 1880 Bom P J 331, *Vithoji Somaji v. Tukaram Gangaji*.
5. ('31) Beng S M Vol I p. 74.
6. ('33) Mad S M p. 112 (Citing, G. O. No. 230 L. & M., 20th January 1930 : B. P. Mis., 149, 16th January 1939.)



agreement,<sup>7</sup> and by virtue of S. 6 was liable to be stamped with the higher duty a lease.

The words "undertaking in writing" in cl. (b) contemplate as much a composite agreement signed by both the lessor and lessee as an unilateral agreement signed by the lessee only. Hence, if there is an undertaking on the part of the lessee in writing which is not a counterpart of a lease and the undertaking on the part of the lessee in writing which is not a counterpart of a lease and the undertaking is to occupy or pay or deliver rent for immovable property, the document would be a lease and the mere fact that the lessor also is a party to the same document and has signed it would not take it outside the scope of clause (b).<sup>8</sup>

Where the document is covered by cl. (b) as containing an undertaking to occupy or pay rent, it will be "lease" for the purpose of this Act although the lessee has no interest in the immovable property and is only a licensee.<sup>9</sup>

27. Agreement to take land.—See Note 26.

28. Agreement to pay rent.—An undertaking in writing to pay or deliver rent is expressly included within the definition of a "lease" under cl. (b) of this sub-section. Such an undertaking is not a lease under S. 105 of the Transfer of Property Act. (See A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., S. 105, Note 9.) But it is to be treated as a lease for purposes of stamp duty.<sup>1</sup>

"Rent" in the strict sense of the term does not include compensation for use and occupation. Such compensation is payable where the occupation is *permissive* but is not in the character of a lessee, i.e., as a person to whom an interest in the land has been demised by way of a lease. (See A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., S. 105, Note 70.)

But for purposes of this Act, the word "rent" does not seem to have been used in the strict sense mentioned above. Even an agreement to pay compensation for use and occupation will, therefore, be an agreement to pay "rent" under cl. (b) and as such will be a "lease" within the definition in the sub-section.<sup>2</sup>

The agreement to pay "rent" must be "for the immovable property". Hence, where no right to possession is granted but only a right to graze cattle, a so-called "rent note" will not be a "lease."<sup>3</sup>

See also Note 24.

7. ('39) 26 AIR 1939 All 724 (725): 185 Ind Cas 391 (DB), *Shaban Ali v. Mohd. Ishaq*. Also see S. 6 Note 7.

8. ('33) 20 AIR 1933 All 735 (738): 55 All 874: 145 Ind Cas 674 (FB), *In the matter of Burmah Shell Oil Storage & Distributing Co. of India, Ltd.*

9. See ('33) 20 AIR 1933 All 735 (738): 55 All 874: 145 Ind Cas 674 (FB), *In the matter of Burmah Shell Oil Storage and Distributing Co. of India, Ltd.* Also see Note 4.

#### S2 (16)—NOTE 28

1. ('48) 35 AIR 1948 Bom 336 (336, 337): ILR (1948) Bom 342 (DB), *Collector and Superintendent of Stamp v. Laxmibai, Bombay*. (Letter written by tenant to landlord containing undertaking to pay rent held to be lease.)

('45) 32 AIR 1945 Nag 178 (179): ILR (1945) Nag 928 *Lokmat Motor Service v. New Lokmat Lodging*. (A rent note executed by a

tenant is covered by the definition of lease in S. 2 (16) (b) of the Stamp Act.) [See ('69) 5 Bom HCR (AC) 92 (94) (DB), *Moro Vithal v. Tukaram*. (*Bhade Khat* is lease.)]

2. ('26) 13 AIR 1926 Pat 487 (489): 98 Ind Cas 374 (DB), *Rameshwar Singh v. Kitab Ali*.

[See ('30) 17 AIR 1930 Bom 165 (166): 126 Ind Cas 872 (DB), *Sherif Dadumiyaji v. Emperor*. (In this case, it was held that the occupier was a "tenant" and not a mere licensee, though the words used in the document were "Compensation for use and occupation." The case was not one under the Stamp Act—But the case shows that a rigid construction of words, like "damages for use and occupation", "rent," etc., used by parties is not necessary in appraising the true nature of such transactions.)]

3. ('89) 13 Bom 87 (89), *In re Hormasji Irani*.



See also Note 24.

29. **Muchalka.**—See Note 28.

30. **Counterpart of lease.**—“Counterpart” means the corresponding part or duplicate. When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original and the rest are counterparts.<sup>1</sup> So, when a lease-deed is executed by the lessor, the lessee may execute a counterpart of the lease, undertaking to cultivate, occupy, pay or deliver rent in respect of the property. Such a document would be an “undertaking to cultivate,” etc., immovable property, and as such would *prima facie* have been covered by the words of cl. (b) and have been a “lease” for the purpose of this Act. But a counterpart of a lease has been expressly excluded from the definition of a lease under cl. (b) and so, such a document is not a lease for the purpose of this Act. An instrument containing an undertaking to cultivate etc., immovable property will be a lease under cl. (b) only if it is not a counterpart of a lease.

The reason why counterparts have been excluded is that counterparts are separately provided for where the original document has been properly stamped.<sup>2</sup> See Art. 25.

A counterpart of a lease is a lease for the purpose of the Registration Act.<sup>3</sup> See S. 2 (7) of that Act.

31. **Marupattam.**—A *marupattam* is a counterpart of a lease executed by a tenant promising certain rent.<sup>1</sup> Hence, such a document is not a *lease* as a counterpart of a lease has been specifically excluded from the definition under this subsection (see clause (b) and Note 30).

It was held by a Full Bench in *Govindan Nambudri v. Ottathayid Moidin*<sup>2</sup> that *marupat* must be stamped both as a counterpart and as a mortgage. This view was, however, not followed in a subsequent Full Bench case, *In re Secretary to the Commissioner of Salt Abkari and Separate Revenue, Madras*<sup>3</sup> and it would seem that a *marupattam* is only liable to be stamped as a counterpart of a lease, and there are no two distinct matters comprised in such documents, within the meaning of S. 5.

32. **“Tolls of any description.”**—Any instrument by which tolls of any description are let, is a “lease” for the purpose of this Act. The term “lease” includes only an instrument by which tolls are “let” and there are no words by which a writing by the *toll-contractor* is sought to be included under the term “lease.”<sup>1</sup> According to Wharton’s *Law Lexicon*, “Toll has two significations : (1) a liberty to buy and sell

#### Section 2 (16)—NOTE 30

1. Wharton’s *Law Lexicon*.  
[But see (‘33) Mad S M p. 109, (Citing, B. P. 999-R., Mis., 21st July 1909—Deed executed by tenant called ‘lease’ and that executed by landlord, counterpart.)]
2. (‘33) 20 AIR 1933 All 735 (739) : 55 All 874 : 145 Ind Cas 874 (FB), *In re Burmah Shell Oil Storage and Distributing Co., Ltd., of India*.
3. (‘69) 5 Bom H C R (AC) 92 (94), *Moro Vithal v. Tukaram*. (Bhade Khat is an agreement between a lessee and a lessor in the nature of a counterpart of a lease and must be treated as a lease for the purpose of the Registration Act.)

#### Section 2 (16)—NOTE 31

1. (‘18) 5 AIR 1918 Mad 504 (505) : 41 Mad 469 : 42 Ind Cas 943 (FB), *Govindam Nambudri v. Ottathayial Moidin*. (Moore’s Malabar Law referred to.)  
Also see Art. 25 Note 1.
2. (‘18) 5 AIR 1918 Mad 504 (505) : 41 Mad 469 : 42 Ind Cas 943 (FB).
3. (‘20) 7 AIR 1920 Mad 225 (225) : 43 Mad 365 : 56 Ind Cas 154 (FB).

#### Section 2 (16)—NOTE 32

1. (‘33) Mad S M p. 111 (112). (Citing, B. Ps. 357-R., Mis., 4th December 1928 ; 77-R., Mis., 22nd February 1928—If there was a duly stamped lease signed by the President, then the writing executed by the



within the precincts of the manor, which seems to import as much as a fair or market; (2) a tribute or custom paid for passage." According to the *Concise Oxford Dictionary*, a toll is a "tax, duty paid for use of market, public road, etc., or for service rendered." Another definition is: "A tax paid for some liberty, particularly for the privilege of passing over a bridge or on a highway."<sup>2</sup> Thus, the tax paid for passage over a bridge<sup>3</sup> or the use of a ferry<sup>4</sup> or of a highway<sup>5</sup> or for selling in a market or fair<sup>6</sup> or for the right of fishing in a river<sup>7</sup> is a "toll."<sup>8</sup>

"Toll" does not include "Octroi"<sup>9</sup> or customs duty as such duty is paid on goods entering a certain area (town or territory) and not for the privilege of using any highway or waterway or selling in a market or other similar privilege or liberty.

**33. Clause (d)—Words signifying granting of application for lease.**—A mere petition asking for a lease cannot be regarded as a lease.<sup>1</sup> In order to constitute a lease there must be, as provided in cl. (d), any writing on the application for a lease, intended to signify that the application is granted. For example, if the application for a lease is accepted by the lessor by writing the word "granted" in the margin, the instrument would be a lease.<sup>2</sup> An application would not be a lease if it is accepted orally and not in writing.<sup>3</sup>

**34. Duty payable.**—See Sch. I, Art. 35.

toll-contractor would constitute counterpart of a lease, chargeable with the maximum duty of Re. 1-8-0 under Art. 21 of Sch. I-A of the Stamp Act. In the absence of a duly stamped instrument of lease signed by the President, the writing signed by the contractor would neither be a 'lease' nor "counterpart of a lease" within the meaning of the Stamp Act, but would, if attested, be a bond order S. 2 (5) and subject to the payment of stamp under Art. 13 of Sch. I-A of the Stamp Act; and if unattested, would be an "agreement" liable to be stamped under Art. 4 (c) of Sch. I-A of the Stamp Act.)

2. Financial Commissioner's circular No. 35, dated 13-8-1883, cited in (1934) Punjab Stamp Manual, Part I-B, Ch. 3, para. 2 (xi) p. 3 (3).

3. ('88) 15 Cal 259 (263) (DB), *Ram Pitam Shah v. Shoobal Chunder*.

4. ('83) 1883 Bom P J 11, *Deputy Collector of Rohri v. Dennial Walad Chelaram*.

('33) Mad S M p. 106. (Citing B. P. 2501, 28th August, 1885.)

5. ('80) 2 Mad 104 (105) (DB), *Goodrich v. Venkanna*.

('69) 2 Beng L R (A Cr) 17 (21) : 11 Suth W R 26 (DB), *In the matter of the petition of Banka Behari Ghose*.

6. ('08) 31 Mad 54 (58) : 17 Mad L Jour 537, *President Taluk Board v. Lakshminarayana*.

7. ('24) 11 AIR 1924 Cal 562 (566) : 51 Cal 110 : 81 Ind Cas 501 (DB), *Midnapur Zamindary Co. v. Trailokya Nath Halder*.

('33) Mad S M p. 112. (Citing B. P. Mis. 231, 8th August 1932; B. P. 45, Press, 27th April 1940.)

8. Financial Commissioner's circular No. 35, dated 13-8-1883, cited in (1934) Punjab Stamp Manual, Part I-B, Ch. 3, para. 2 (xi) p. 3 (3).

9. Financial Commissioner's circular No. 35, dated 13-8-1883, cited in (1934) Punjab Stamp Manual, Part I-B, Ch. 3, para. 2 (xi) p. 3 (3).

#### S2 (16)—NOTE 33

1. ('70) 14 Suth W R 178 (179) (DB), *Choonee Mundur v. Chundee Lall Das*.

('70) 14 Suth W R 334 (335) (DB), *Choonee Mundur v. Chundee Lal*.

('81) 7 Cal 703 (707) : 10 Cal L R 121 (FB), *Syed Sudar v. Amzad Ali*. (It was observed that this view is consistent with 14 Suth W R 178 and 14 Suth W R 509 because in those cases the application of the tenant was not accepted in writing. It was a mere proposal which was accepted if at all orally.)

Also see Note 26.

2. See also ('90) 17 Cal 548 (556), *Boyd v. Kreig*. (Certain correspondence passed between A and B relating to a lease of a plot in the occupation of A which contained an agreement for a lease for one year with an option for renewal for another year. The terms in which the option was given were as follows:—B in one letter wrote:—"So expect you will give me the option of renewal for another year." To which A replied "you may have the option of retaining it for another year." In pursuance of an agreement B had a draft lease prepared embodying the terms agreed upon which he sent to A for approval and which was in due course returned by him "approved". Held that the correspondence must be stamped.)

3. ('72) 17 Suth W R 509 (510) (DB), *Bibi Meheroonnissa v. Abdool Gunee*.

('45) 32 AIR 1945 Mad 138 (139) ILR (1945) Mad 539 (FB), *The Prince of Arcot Endowment, Trichinopoly v. Arunachalam*.



\*(16A)<sup>a</sup> [“marketable security”] means a security of such a description as to be capable of being sold in any stock market in <sup>b</sup>[the Provinces] or in the United Kingdom.

a. This sub-section was inserted by S. 2 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

b. Substituted for “British India” by I. O.

#### Synopsis

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| <ol style="list-style-type: none"> <li>1. History of sub-section.</li> <li>2. “Marketable security.”</li> <li>3. Illustrative cases.</li> </ol> | <ol style="list-style-type: none"> <li>4. Promissory note and marketable security—Distinction.</li> <li>5. Debenture—Meaning of. See Sch. I, Art. 27.</li> <li>6. Duty payable.</li> </ol> |
|---|--|

1. **History of sub-section.**—This sub-section was introduced by S. 2 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904). This definition of “marketable security” is on the same lines as that contained in S. 122 of the English Stamp Act, 1891 (54 & 55 Vic., c. 39). This definition was required because of the insertion by the same amending Act of the new S. 23-A., which was introduced to make special provisions in respect of mortgages of marketable securities.<sup>1</sup>

2. **“Marketable security.”**—The expression “marketable security” was judicially explained by Lord Shand in *Texas Land and Cattle Co. v. Commissioners of Inland Revenue*<sup>1</sup> as meaning “securities of such a description as to be capable, according to the use and practice of stock markets, of being there sold and bought.” It will be seen that the definition contained in this sub-section is substantially the same as this explanation.

The words “of such a description” in the definition are important, the intention being, on the one hand, to include a security of such a description as to be capable, according to the use and practice of stock markets, of being there bought and sold, although there may in fact be no market for the particular security in question, and, on the other hand, not to include a security which is not of that description, although having some value, it is *in fact* capable of being sold.<sup>2</sup>

In *Speyer Brothers v. Inland Revenue Commissioners*<sup>3</sup> while explaining this term Cozens-Hardy L. J., observed :

“That definition (of marketable security) involves an issue of fact. The question is not merely whether the security has in one case been so dealt with, but whether it is, in the fair sense of the word, a security of such a description as to be capable of being sold in any stock market in the United Kingdom.”

A marketable security does not necessarily involve hypothecation of property as security for the debt for which it is issued.<sup>4</sup>

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\*[CF. (1870) 33 & 34 Vict. C. 97—S. 2 (10); (1891) 54 & 55 Vict. C. 39—S. 22 (1), para. 9.]

#### Section 2 (16A)—NOTE 1.

1. See Report of the Select Committee, dated 20th October 1904.

#### S 2 (16A)—NOTE 2

1. (1888) 16 R (Court of Session) Cas 4th Series 69 : 26 S C L R 49. (Quoted with approval in (1895) 2 Q B 598, *Brown Shipley & Co. v. Commrs. of Inland Revenue*.)
2. Halsbury's *Laws of England*, Vol. 24, para. 1566, page 728.

[See also (1888) 16 R (Court of Session) Cas 4th Series 69 : 26 S C L R 49, *Texas Land & Cattle Co. v. Inland Revenue Commissioners*.

(1895) 2 Q B 598 (601) : 64 L J M C 241 : 73 L T 377, *Brown Shipley & Co. v. Inland Revenue Commissioners*.]

3. (1907) 1 K B 246 (256).

4. (1907) 1 K B 246 (253, 254), *Speyer Brothers v. Commissioners of Inland Revenue*.



The definition includes not only Indian but also, British, Colonial and foreign securities. But they must be such as to be capable of being bought and sold in any stock market in British India or the United Kingdom.

As examples of marketable securities may be mentioned debentures, share warrants, share certificates, etc.

**3. Illustrative cases.**—Bonds of a foreign company payable to bearer were executed by the company abroad and delivered abroad to a foreign trustee for the bond holders. The bonds were expressed not to be valid for any purpose unless authenticated by the certificate of the trustee. Some of the bonds were sent to England and the trustee having come to England there certified them to the persons entitled to them. When the question arose with regard to one of these bonds, it was held that at the time it first reached London, it was not a marketable security. It required a particular signature and it became a marketable security when the certificate was signed.<sup>1</sup>

For other instances of what are marketable securities, see the undermentioned cases.<sup>2</sup>

**4. Promissory note and marketable security—Distinction.**—The essential feature of a promissory note is that it must simply be a promise to pay a certain sum of money to another. The inclusion of any other matter in the instrument which will affect its dominant character as an instrument brought into existence wholly and solely for the purpose of conveying a single promise, (that promise, being to pay money) will take the instrument out of the category of a promissory note. Such a complex document, however, may be a marketable security.<sup>1</sup>

#### Section 2 (16A)—NOTE 3

1. (1898) 1898 App Cas 565 (568, 569): 67 L J Q B 855: 79 L T 227: 47 W R (Eng) 210, *Revelstoke v. Commrs. of Inland Revenue*. (*Baring v. Commissioners of Inland Revenue*, (1898) 1 Q B 78, affirmed.)
2. (1911) 2 K B 1001 (1006): 81 L J K B 75: 105 L T 482, *Deddington Steamship Co. Ltd. v. Commrs. of Inland Revenue*. (A company issued a debenture bond for £1000 and interest. The debenture was one of a series protected by a trust-deed. It purported to create a charge upon 3 ships belonging to the company. These ships had previously been mortgaged. The trust-deed contained covenants for payment of principal and interest and provisions for the maintenance and realisation of the security usual in trust deeds. In this case it was conceded that the debentures were marketable securities.)
- (1900) 83 L T 714 (715, 716): 17 T L R 99, *Noakes v. Commrs. of Inland Revenue*. (A certificate for 4 per cent. debenture stock of a foreign railway certified that the appellant was the owner of a certain amount of such stock, and there was endorsed on such certificate a form of transfer signed by the appellant, the name of the transferee being left in blank. It was admitted that such certificates with the transfer in blank therein were by usage treated as sufficient for the purpose of effecting a sale in the stock markets of the United Kingdom of the stock referred to therein; but such stock was really

transferable only in the books of the railway company upon production of such certificate. Held that the certificate as endorsed was a marketable security within S. 4 (1) of the Finance Act, 1899.)

- (1900) 1 Q B 217 (219, 222): 69 L J Q B 66: 81 L T 625: 48 W R (Eng) 198, *Knights Deep Ltd. v. Commrs. of Inland Revenue*. (A foreign limited company (from South Africa) issued a series of debentures for £100 each, redeemable at par by annual drawings on and after July 1, 1902. Each debenture contained a stipulation that the company might, at any time after July 1, 1900, on giving 6 months' previous notice in writing to the registered holder, redeem the debenture at 103, which sum, at the expiration of 6 months, should become payable as if the same were the amount of the principal money thereby secured. These debentures were issued by a foreign company and were capable of being sold in a stock market in the United Kingdom. It was admitted that these debentures came under the heading of "marketable securities").

#### Section 2 (16A)—NOTE 4

1. (1907) 1 K B 246 (252, 253), *Speyer Brothers v. Commrs. of Inland Revenue*. (Treasury notes of foreign Government described as gold coupon treasury notes held to be marketable securities and not promissory notes. (1906), 1 K B 318 reversed—Affirmed in (1908) App Cas 92.)



See also S. 2 (22) Note 14.

5. **Debenture**—Meaning of.—See Sch. I, Art. 27.

6. **Duty payable.**—There is no special provision in this Act dealing with the duty payable on “marketable securities” as such, as there is under the English Stamp Act. Some of the Articles in the Schedule dealing with the subject are Art. 19 (certificate of share, stock etc.), Art. 27 (debenture) and Art. 59 (share warrants). The duty payable in each case will depend on the nature of the instrument.

\*(17) **“mortgage-deed”** includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property :

#### Synopsis

- |   |   |
|---|---|
| 1. Legislative changes.   | 13a. “Propety.”   |
| 2. Scope of definition.   | 14. “Specified property.”   |
| 3. Construction of instrument to see if it is mortgage-deed.                      | 15. Mortgage of future property.  |
| 4. Document must be one whereby a right is created in regard to certain property. | 16. Mortgage of crop.   |
| 5. Mortgage by deposit of title-deeds.  | 17. Deed of further charge.   |
| 6. Agreement to execute a mortgage.   | 18. Mortgage and sale with clause for repurchase.                               |
| 7. Compromise Petition.   | 19. Mortgage and trust.   |
| 8. Instrument varying terms of earlier mortgage.                                  | 20. Kanom.  |
| 8a. Sub-mortgage.   | 21. Marupattam.   |
| 9. Lease or mortgage.   | 22. Mortgage combined with another instrument.                                  |
| 10. “Future debt.”  | 23. Covenants in mortgage-deed.   |
| 11. “Performance of an engagement.”   | 24. Compromise decree.  |
| 12. “Right over or in respect of property.”                                       | 25. Security bond.  |
| 13. Covenant against alienation.  | 26. Stamp affixed whether determines valuation for the purpose of registration. |

1. **Legislative changes.**—The Act XVIII of 1869, S. 3 (18) defined a mortgage-deed as “including every instrument evidencing a pledge of property to secure repayment of money.”

The definition in Act I of 1879 (S. 3 (13)) is the same as the present except that the words “in respect of” are new.

The Act XVIII of 1869 contained a definition of “property” which confined it to “property being in British India.” Hence, it was held that a mortgage of property which at the time of execution of the document was outside British India but which was subsequently brought into India was not a “mortgage-deed” under the Act.<sup>1</sup> The definition of “property” has been omitted in the later Acts.

\*[1879—S. 3 (13) ; 1869—S. 3 (18). Cf. : (1870) 33 & 34 Vict., c. 97—S. 105 ; (1891) 54 & 55 Vict., c. 39—S. 86.]

(1895) 2 Q B 598 (600, 601) : 64 L J M C 241 : 73 L T 377 : *Brown Shipley & Co. v. Commrs. of Inland Revenue*. (Instrument by which company promises payment and also contracts that the holder will be entitled to the security of certain trust funds.)

Section 2 (17)—NOTE 1

1. ('77) 2 Cal 58 (87, 88) : 1 Ind Jur 337 (DB), *Moran v. Mittu Bibee*.  
Also see S. 2 (10) Note 5, S. 3 Note 18 and Art. 41 Note 2.



2. **Scope of definition.**—The definition in this clause is wider than the definition of a “mortgage” in S. 58 of the Transfer of Property Act.<sup>1</sup> It includes charges and mortgages of movable property. Further, the words “which may give rise to a pecuniary liability” which occur after the words “performance of an engagement” in S. 58 of the Transfer of Property Act, do not occur here.

For purposes of this Act, it is this definition and not that in the Transfer of Property Act that is to be adopted.<sup>2</sup>

3. **Construction of instrument to see if it is mortgage-deed.**—An instrument, in order to amount to a mortgage-deed need not be *described* as a mortgage-deed<sup>1</sup> nor is any particular form of words necessary for the purpose.<sup>2</sup> If the instrument read as a whole shows an intention to hypothecate the property for the purpose of security, it constitutes a mortgage-deed.<sup>3</sup>

4. **Document must be one whereby a right is created, in regard to certain property.**—In order to constitute a “mortgage-deed,” the document itself must create the mortgage right. Thus, a mere memorandum of a mortgage transaction entered in the mortgagee’s books is not a mortgage-deed.<sup>1</sup> Similarly, a mere agreement to give security, which is not itself the security-deed is not a mortgage-deed.<sup>2</sup> Thus, a *mutchalka* executed by an excise licensee, stated that the licensee agreed to the terms of the licence. One of the terms was that for the security of the due performance of the conditions of the contract the licensee shall deposit with the Collector in cash, Government notes or stock notes, a sum equal to three months’ rental. It was held that neither the licence nor the *mutchalka* itself created any interest in the deposit

## S 2 (17)—NOTE 2

1. ('95) 20 Bom 408 (417) (FB), *Datto Dudhe-shwar v. Vithu*.
- ('91) 1891 Bom P J 284 (DB), *Gopinath v. Baleram*. (The document need not create an “interest” in immovable property as under S. 58, T. P. Act.)
2. (1900) 27 Cal 587 (592): 4 Cal W N 524 (DB), *Queen-Empress v. Debendra Krishna*.

## S 2 (17)—NOTE 3

1. ('98) 21 Mad 358 (360) (FB), *Reference under Stamp Act, S. 46*. (Document described as a lease held usufructuary mortgage.)
2. ('70) 5 Beng LR 264 (272): 13 Suth W R 82 (FB), *Rajkoomar Ramgopal Narayan Singh v. Ram Dutt Chowdhry*. (Document by a borrower in favour of creditor not to alienate his property till the debt was paid off and if a transfer was made it would be invalid and deemed to be for the purpose of evading payment—*Held*, mortgage.)
3. ('31) 18 AIR 1931 Cal 732 (733): 134 Ind Cas 1269 (SB), *Verajlal Mulji v. Secy. of State*, (Word used was “pledge”—*Held*, document was a mortgage.)
- ('67) 2 Agra H C R 124 (124) (DB), *Martin v. Pursram*. (Where money is admitted to be borrowed and interest is agreed upon and the deed also contains a provision by which the debtor agrees not to alienate certain property till the debt is paid, the deed sufficiently indicates an intention to pledge the property.)

- ('14) 1 AIR 1914 All 187 (189): 36 All 201 22 Ind Cas 973 (DB), *Jwahir Mal v. Rani Indomati*. (The mere fact that the word mortgage has not been used or there is no clause giving right of sale to the mortgagee is not sufficient to take the deed out of the category of mortgage—The document was held to be a mortgage—Case under S. 58 T. P. Act.)

## S2 (17)—NOTE 4

1. ('38) 25 AIR 1938 Lah 460 (460): 177 Ind Cas 469, *Dasaundha Singh v. Malhi Singh*. ('83) 1883 Pun Re No. 31 (Cr) page 78 (79) (DB), *The Empress v. Mayamal*.
2. See (1899), 1 Q B 361 (366): 68 L J Q B 218: 79 L T 556: 47 W R (Eng) 381, *United Realization Co. v. Commrs. of Inland Revenue*. (But an instrument may itself create a charge although it provides for the execution of a more formal deed.)  
[See also (1900) 23 Mad 207 (209), *Reference under Stamp Act, S. 46*. (X company admitted that it owed certain sum to Y company and agreed that on execution of the document they would hand over certain debentures which together with the debentures already issued to the Y company were to be held as security for the debt. It was contended that this was not a transfer but only an agreement to transfer—*Held*, that the agreement was to transfer the debentures on execution of the document and was therefore, in effect, an actual transfer.)]



in favour of the Government and hence neither of the documents amounted to a mortgage-deed.<sup>3</sup>

Where a promissory note is endorsed and delivered by A to a bank as a security for the cash credit which the bank has agreed to give to B, a third person, the instrument between A and the bank, whereby the rights of the bank in regard to the promissory note are limited in the manner provided in the document, is not a mortgage-deed. The reason is that such an instrument does not *create* any right in favour of the bank in regard to the promissory note. On the other hand, the document curtails the rights of the bank in regard to the promissory note which would have otherwise passed to it absolutely by the endorsement and delivery.<sup>4</sup>

**5. Mortgage by deposit of title-deeds.**—A mortgage by deposit of title-deeds does not require any written instrument. A memorandum of the deposit *subsequently* made is not a mortgage-deed as it is not the document *by which* the mortgage is created.<sup>1</sup> (See Note 4.) But where the document is contemporaneous with the delivery of the title deeds and in fact constitutes the bargain between the parties, it is a mortgage-deed. There is a special Article, namely Art. 6 in Sch. I, applicable to such documents. But this does not prevent the document from being a *mortgage-deed*.<sup>2</sup>

**6. Agreement to execute a mortgage.**—A mere agreement to execute a mortgage is not a mortgage-deed. See Note 4.

**7. Compromise petition.**—A petition of compromise made to the Court will be a "mortgage-deed" where it creates a right in any property as described in this clause.<sup>1</sup>

**8. Instrument varying terms of earlier mortgage.**—An instrument merely varying the terms of an earlier mortgage and not creating a new mortgage is not a mortgage-deed. Thus, an instrument extending the period of redemption of a mortgage need not be stamped as a mortgage-deed<sup>1</sup> even though the time for redemption of the mortgage has expired at the time of the making of such instrument.<sup>2</sup> So also an instrument enhancing the rate of interest payable on a mortgage is not chargeable as a mortgage-deed.<sup>3</sup> But where the document besides altering the terms of the

3. ('91) 15 Mad 134 (135) (FB), *Reference under Stamp Act*, S. 46.

Also see Art. 5 Note 3.

4. ('33) 20 AIR 1933 Rang 31 (32) : 11 Rang 145 : 142 Ind Cas 761 (FB), *In re Imperial Bank of India*.

#### S2 (17)—NOTE 5

1. ('32) 19 AIR 1932 Sind 73 (75) : 26 Sind L R 29 : 139 Ind Cas 95, *Tyabali A. Mandviwalla v. Parpatibai*.

2. ('37) ILR (1937) 2 Cal 486 (492), *In the matter of Kamla Ranjan Ray*.

('91) 1891 Bom P J 284, *Gopinath v. Baleram*. (That an instrument evidencing an agreement to secure the repayment of a loan made upon the deposit of title-deed is included in the definition of a "mortgage deed" is clear from the terms of Art. 44, (Act 1 of 1879) namely, "not being an agreement relating to deposit of title-deeds.")

#### S2 (17)—NOTE 7

1. ('80) 2 All 481 (485) (DB), *Surju Prasad v. Bhawani Shahi*.

('83) 1883 All W N 93 (96) (FB), *Rup Chand v. Thakur Dial*.

Also see Art. 5 Note 12.

#### S 2 (17)—NOTE 8

1. See ('99) 1 Bom L R 7 (10) (FB), *Reference under Stamp Act*, S. 46. (Property mortgaged—Further advance made on the security of the same property by a fresh mortgage-deed which extended the period of redemption of the old mortgage—The new mortgage-deed should be stamped only in respect of the amount of the new loan advanced.)

2. ('25) 12 AIR 1925 All 501 (502) : 47 All 310 : 86 Ind Cas 1027 (FB), *In the matter of Rameshwar Prasad*. (An agreement whereby, in consideration of enhanced rate of interest mortgagee agrees to extend period of mortgage, is not a fresh mortgage and is chargeable as an agreement under Sch. I Art. 5 (c) as amended by U. P. Stamp (Amendment) Act of 1923.)

3. ('25) 12 AIR 1925 All 501 (502) : 47 All 310 : 86 I. C. 1027 (FB), *In the matter of Rameshwar Prasad*.  
Also see Art. 5 Note 3.



mortgage as to the period of redemption or rate of interest, also provides that the mortgagor would be personally liable for the mortgage-money and that his other property would also be security for the money, the document will be a fresh mortgage and not merely an *agreement* varying the terms of a mortgage.<sup>4</sup>

**8a. Sub-mortgage.**—A mortgages a certain land to B and B sub-mortgages a portion of it to C. The second transaction is a fresh mortgage and not merely a transfer.<sup>1</sup>

**9. Lease or mortgage.**—A document may be a mortgage-deed although it is described as a lease.<sup>1</sup> (See Note 3). Conversely, a document may be a lease though described as a mortgage-deed.<sup>2</sup> The substance of the transaction has to be considered in each case. The test is to see whether the document is intended to create a security on the property in regard to a debt, in which case alone it will be a mortgage deed. The undermentioned<sup>3</sup> are illustrative cases.

Where a lease-deed contains provisions whereby the lessee hypothecates certain property of his own as security for the due performance of his covenants under the lease, the document is both a lease and a mortgage-deed and comes under S. 6.<sup>4</sup> (See also Notes on S. 2 (16) and A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., S. 58 Note 36 and S. 105 Note 67.)

**10. "Future debt."**—Under this definition the mortgage may be in regard to a "future debt." Where the annual rent for a certain period payable by the mortgagor, was secured by an instrument it was held that the purpose was to secure a "future debt" and the instrument was, therefore, a mortgage-deed.<sup>1</sup>

**11. "Performance of an engagement."**—A mortgage-deed may be for securing the performance of an engagement such as the payment of future rent, the periodical delivery of certain articles such as straw, grass, etc.<sup>1</sup>

4. ('36) 38 Pun L R 213 (215), *Abdullah v. Emperor*.

S 2 (17)—NOTE 8a

1. ('33) Mad S M p. 115. (Citing, B. P. 324 31st January (1882).)

S 2 (17)—NOTE 9

1. ('98) 21 Mad 358 (360) (FB), *Reference under Stamp Act*, S. 46.

2. ('84) 7 Mad 203 (206) (FB), *Reference under Stamp Act*, S. 46.

3. ('71) 7 Beng L R (AC) 14 (17): 15 Suth W R 331 (DB), *Ishan Chandra v. Sujan Bibee*. (A document stated that on receipt of Rs. 99 by X he mortgaged certain land to Y which he was to hold for six years. *Held*, that this was not a lease but a mere usufructuary mortgage.)

('97) 24 Cal 272 (279, 280): 23 Ind App 158 (PC), *Bengal Indigo Company v. Raghobur Das*. (*Held* that the zar-i-peshgi leases in question were not mere contracts for the cultivation of lands but constituted real and valuable security to the tenant for the principal sums which he had advanced and interest thereon. The tenant's possession under them was in part at least not that of cultivators only but that of creditors operating repayment of the debt due to them by means of the security.)

('75) 8 Mad H C R 31 (36) (DB), *Mashook Ameen Suzzada v. Marem Reddy*. (In consideration of certain sum due to X, Y went in possession of certain land, which, it was agreed, he was to hold for 55 years at a certain rent out of which a part was to be paid to X and a part was to go in liquidation of certain debt. In this way the debt would be wiped out in 55 years. Before the expiry of this period redemption suit was brought. *Held* that the transaction was a mortgage which could be redeemed.)

4. ('95) 17 All 55 (57): 1894 All W N 204 (FB), *Reference under Act 1 of 1879 Indian Stamp Act*. (Deed under which certain lands had been leased to the lessees for 8 years and the lessees had hypothecated certain property of their own for the purpose of securing the payment of the agreed rent in cash and the performance of the undertaking under the lease to deliver certain cart-loads of straw and grass, held to constitute a mortgage-deed.)

Also see S. 2 (16) Note 8 and S. 6 Note 7.

S 2 (17)—NOTE 10

1. ('95) 17 All 55 (57): 1894 All W N 204 (FB), *Reference under Act 1 of 1879 Indian Stamp Act*.

S 2 (17)—NOTE 11

1. ('94) 17 All 55 (57): 1894 All W N 204 (FB), *Reference under Act 1 of 1879 Indian Stamp Act*.



**12. "Right over or in respect of property."**—Under S. 58 of the Transfer of Property Act, a mortgage is the transfer of an *interest* in specific immovable property. But under this clause, such transfer of an *interest* in property is not necessary. The creation of *any right* over or in respect of specified property for the purpose of security is enough although no *interest* in property is created thereby.<sup>1</sup>

**13. Covenant against alienation.**—An instrument whereby a borrower merely undertakes not to alienate his property till the loan is repaid, merely imposes a restriction on the borrower; it does not create any right over or in respect of the property in favour of the lender and so is not a mortgage-deed,<sup>1</sup> unless there are special terms indicating that a mortgage was intended.<sup>2</sup>

See also A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., section 58, Note 4.

**13a. "Property."**—The term "property" is nowhere defined in this Act. But it appears to have been used in its widest and most generic legal sense. It embraces both movable and immovable property.<sup>1</sup> An actionable claim is movable property.<sup>2</sup> It has been held that money is not movable property and therefore a document whereby a specific sum has been offered as security will not be a mortgage-deed within this clause.<sup>3</sup>

For a fuller discussion of the topic, A. I. R. Commentaries on the Transfer of Property Act 3rd (1950) Edn., S. 5 Note 5 may be consulted.

**14. "Specified property."**—A mortgage-deed, as defined in this clause, transfers or creates rights in respect of *specified property*. No general rule can be laid down as to what description is sufficient to make the property "specified property" within the meaning of this clause. The question has to be decided with reference to the terms of the instrument and particular circumstances that lead up to and surround the making of the instrument.<sup>1</sup> See the undermentioned illustrative cases.<sup>2</sup>

#### S 2 (17)—NOTE 12

1. ('91) 1891 Bom P J 284 (DB), *Gopinath v. Balaram*.

#### S 2 (17)—NOTE 13

1. ('80) 2 All 449 (450) (DB), *Bhupal v. Jag Ram*.  
† ('17) 4 AIR 1917 All 4 (6) : 39 All 244 : 39 Ind Cas 18 (FB), *Mohanlal v. Indomati*.  
( '81) 7 Cal 196 (199) : 8 Cal L R 454 (DB), *Naji Bulla v. Nasir Mistri*.  
( '78) 3 Cal 336 (338) : 1 Cal L R 91 (DB), *Gunoo Singh v. Latafat Hussain*.
2. ('70) 5 Beng L R 264 (272) : 13 Suth W R 82 (FB), *Rajkumar Ram Gopal Narayan Singh v. Ramdutt Chowdhry*.  
( '78) 3 Cal 336 (338) : 1 Cal L R 91 (DB), *Gunoo Singh v. Latafat Husain*.

#### S 2 (17)—NOTE 13a

1. (45) 32 AIR 1945 Lah 69 (73), ILR (1946) Lah 185 (SB), *Miran Baksh v. Emperor*.
2. ('45) 32 AIR 1945 Lah 69 (73) ILR (1946) Lah 185 (SB), *Miran Baksh v. Emperor*.  
( '47) 34 AIR 1947 All 190 (191) : ILR (1947) All 7 : 231 Ind Cas 142 (FB), *Rishidere Sondhi v. Dhampur, Sugar Mills*. [The correct position in such a case, is, it is submitted, that there is no "specified" property in respect of which the right is created—Ed.]

#### S2 (17)—NOTE 14

1. ('90) 12 All 175 (178, 179) : 1890 All W N 60 (DB), *Shadi Lal v. Thakur Das*. (The property was described as "zamindari apni" (our zamindari). Held that the words were sufficiently certain, or at any rate were capable of being made certain by the proof of the mortgagors being, at the date of the mortgage-deed, the owners of a specific zamindari interest.)
2. ('31) 18 AIR 1931 Cal 732 (733) : 134 Ind Cas 1269 (SB), *Verajlal Muljee v. Secy. of State*. (Deed stating result of partnership account—Party under obligation to pay agreeing to hold movable and immovable property mentioned in his title-deed on behalf of other party—Held that the property was ascertained or ascertainable on reference to the title-deeds, mention of which was made in the deed.—Hence, the mortgage attached to specified property—Transaction was mortgage.)  
( '84) 7 Mad 209 (210) (FB), *Reference under Stamp Act, Section 46*. (Contract by contractor with the executive engineer—Stipulation that payment should be made from time to time to the contractor and the engineer might retain 10% on the value of the work done to cover compensation for default on the part of the contractor and as security



It is not necessary that the property be described by metes and bounds or by name, but the words of the instrument must be sufficient to indicate clearly what property is referred to.<sup>3</sup> Where the words indicating the property are not certain but are capable of being made certain the maxim *certum est quod certum reddipotest* (that is certain which is capable of being made certain) would apply.<sup>4</sup>

See also A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., S. 58 Note 9.

**15. Mortgage of future property.**—Under this clause, a mortgage-deed is an instrument by which a person creates or transfers in favour of another a right in *specified property*. It is not clear whether the word “property” is meant to cover existing property as well as future property. However, Art. 41 indicates that this Act contemplates a mortgage of future property also. That article speaks of mortgage of a crop “*whether the crop is or is not in existence at the time of the mortgage.*”

In a recent case<sup>1</sup> it has, however, been held by a Special Bench of the Lahore

for the proper performance of the contract—*Held* that this was not chargeable as a mortgage but as agreement.)

(1888) 13 App Cas 523 (536): 58 L J Q B 75: 60 L T 162: 37 W R (Eng) 513, *Edward Tailby v. Official Receiver*. (Assignment of all the book-debts due and owing or which might during the continuance of the security become due and owing to the mortgagor, *held* not vague on account of the debts not being limited to book-debts in any particular business. It covered all book-debts even in business started after the assignment.)

(’77) 1 All 275 (276) (DB), *Deojit v. Pitambar*. (Deed after stating that the parties were residents of certain places used the words “and we hypothecate as security for the amount our property with all the rights and interests”—Description *held* vague.)

(’88) 11 Mad 216 (217) (FB), *Reference under Stamp Act, S. 46*. (An agreement among certain cotton press companies to make over certain surplus receipts from their respective presses to a trustee, to be held by him till they amount to Rs. 50,000 as security for due maintenance and observance of the conditions of the agreement—*Held* that the fund was not specified property.)

(’81) 3 Mad 35 (36, 37) (DB), *Bheri Dorayya v. Muddipatu Ramayya*. (A promise by a debtor to pay the debt out of his property or an indefinite order of the Court for satisfaction of a decree out of the assets of a deceased person does not create charge.)

(’86) 8 All 486 (489): 1886 All W N 216 (DB) *Bishen Dayal v. Udit Narain*. (The document specified certain property as belonging to obligors and contained the following provision:—“Our right and property in the aforesaid taluka Rajapur shall remain pledged and hypothecated for the debt.”—*Held* that the terms were sufficiently clear to constitute a valid hypothecation.)

(1899) 81 LT 354 (355), *Re Finn-Kelcey : Tyson v. Kelcey*. (“I hereby charge all my real and personal estate whatsoever and wheresoever and of what nature and kind soever the same may be and consist *Held* that there was no vagueness in the description of the property which was ascertainable.)

(’81) 7 Cal 196 (199): 8 Cal L R 454 (DB), *Najibulla Mulla v. Nushir Mistri*. (Where a debtor bound himself “not to alienate property of himself” *held*, no lien was created.)

3. (’87) 9 All 158 (164): 1887 All W N 15 (DB), *Ramsidh Pande v. Balgobind*. (“To secure this money, I pledge voluntarily and willingly my wealth and property in favour of the said banker. Whatever property, etc., belonging to me be found by the said banker, all should be available, to the said banker.”—Words *held* sufficiently clear.)

(’45) 32 A I R 1945 Lah 69 (74) ILR (1946) Lah 185 (SB), *Miran Baksh v. Emperor*. (Whether or not the description of a property given in a document is sufficient to specify it is a question of fact in each case.)

4. (’87) 9 All 158 (164): 1887 All W N 15 (DB), *Ramsidh Pande v. Balgovind*.

(’86) 5 All 11 (14): 1882 All W N 159 (DB), *Khanhid Lal v. Muhammad Husain Khan*. (The words used were: “As... Government has kindly granted zamindari villages to me in perpetuity, therefore I have... fixed an annual allowance...”—*Held*, property granted by Government was ascertainable.)

(’45) 32 A I R 1945 Lah 69 (74) ILR (1946) Lah 185 (SB), *Miran Baksh v. Emperor*. (Mortgage of amounts due under contracts, to the executants from Government, *held* capable of being made certain.)

#### S 2 (17)—NOTE 15

1. (’45) 32 A I R 1945 Lah 69 (71) ILR (1946) Lah 185 (SB), *Miran Baksh v. Emperor*. (Mortgage of right to receive amounts due



High Court that the property to which the deed relates must be in existence at the time when the instrument is executed.

See the undermentioned cases.<sup>2</sup>

**16. Mortgage of crop.**—Schedule I, Article 40 prescribes the stamp-duty for mortgage-deeds not being certain instruments therein mentioned which include a mortgage of a crop. Article 41 is the article which provides for duty for the mortgage of a crop.<sup>1</sup>

**17. Deed of further charge.**—Property which has been made security for a debt may again be made security for a further advance made by the mortgagee to the mortgagor.<sup>1</sup> In such a case the instrument creating the further charge is a mortgage-deed and chargeable with stamp duty only in respect of the amount of the new advance.<sup>2</sup> There is a specific article, namely Art. 32, which deals with deeds of further charge.

**18. Mortgage and sale with clause for re-purchase.**—In mortgages by conditional sale and English mortgages the transfer is only by way of security. Hence, such instruments are only mortgage-deeds for purpose of stamp duty, although they may appear to comprise a *sale* subject to conditions. (See A. I. R. Commentaries on the Transfer of Property Act, 3rd (1950) Edn., S. 58, Note 33.) But where the instrument amounts to a *sale* with a clause for re-purchase it is chargeable as a conveyance (Art. 23) and not as a mortgage-deed.)

**19. Mortgage and trust.**—Where by a document a person declares a trust of certain property in favour of his creditor for the purpose of securing the debts due to such creditor the document will be a mortgage-deed and liable to stamp duty as such.<sup>1</sup> In the undermentioned case<sup>2</sup> an instrument described as a “trust-deed for securing mortgage debentures,” gave the trustees a right to have the trust property vested in them to be held by them as trustees for the debenture holders and as security for the amount to be advanced on the debentures, and also the usual rights of entry, possession and management. It was held that the deed created rights over the property in favour of the trustees and hence was a mortgage-deed.

under the contract at the time it is executed is “mortgage deed” under the Stamp Act. But mortgage of amounts *that might fall due in future* does not fall within the ambit of mortgage-deed.)

2. See (1899) 81 L T 354 (355), *Re. Finn-Kelcey; Tyson v. Kelcey*, (A general charge over all the property of the transferor even though assumed to consist of the future property that may, subsequent to the transaction, come into existence is not invalid for vagueness as regards the future property—No question of stamp.)

(1888) 13 App Cas 523 (536) : 58 L J Q B 75 60 L T 162 : 37 W R (Eng) 513, *Edward Tailby v. Official Receiver*. (The assignment of all the book-debts due and owing or which might during the continuance of the security become due and owing to the mortgagor was held to be valid—No question of stamp.)

#### S 2 (17)—NOTE 16

1. ('41) 28 AIR 1941 All 243 (246) : I L R (1941) All 471 : 195 Ind Cas 791 (FB), *L. H. Sugar Factory Pilibhit v. Moti*. (Sugar crops for one year were mortgaged in this case.)

#### S 2 (17)—NOTE 17

1. ('30) 17 AIR 1930 All 136 (138) : 52 All 281 : 124 Ind Cas 733 (FB), *Lallu Singh v. Ram Nandan*.

2. ('99) 1 Bom L R 7 (10) (FB), *Reference Under Stamp Act*, S. 46. (When property is once mortgaged and a further advance is made on the security of the same property by a fresh mortgage-deed which extends the period of redemption of the original mortgage, the new mortgage-deed should be stamped only in respect of the amount of new loan advanced.)

#### S 2 (17)—NOTE 19

1. ('16), 3 AIR 1916 Mad 374 (376) : 38 Mad 646 : 21 Ind Cas 876 (FB), *Secretary to the Commissioner of Salt, Abkari and Separate Revenue, Madras v. Orr and Bank of Madras*. (Trust-deed in favour of Bank to secure advances by Bank.)

Also see S. 6 Note 7 and Art. 64 Note 2.

2. ('07) 4 Low Bur Rul 2 (5) (FB), *In re Stamp Act*.



20. **Kanom.**—A Kanom is chargeable as a mortgage.<sup>1</sup>

21. **Marupattam.**—See Note 31 on S. 2 (16.)

22. **Mortgage combined with another instrument.**—See the undermentioned cases in which a mortgage was combined with a lease<sup>1</sup> and a bond.<sup>2</sup> See also Notes on Ss. 5 and 6.

23. **Covenants in mortgage-deed.**—Where a mortgage-deed includes also a covenant whereby the mortgagor undertakes to do something which he is, under the law, bound as a mortgagor to do, the instrument is chargeable only as a mortgage-deed. The inclusion of such covenant does not have the effect of making any additional stamp duty payable.<sup>1</sup> So also, the inclusion in a mortgage-deed of a clause which is incidental to all mortgage-deeds, does not make the document chargeable otherwise than as a mortgage-deed.<sup>2</sup>

24. **Compromise decree.**—In *Sharanbasappa v. Sangarbasappa*<sup>1</sup> it was held that a compromise decree creating a charge was not a mortgage-deed within the meaning of this clause. In that case the suit was for a money decree and the terms of the compromise were that a certain sum was to be paid by the defendant to the plaintiff and that sum was to be charged on immovable property which was not the subject-matter of the suit. It was clear that an order to such effect could be made only by

S 2 (17)—NOTE 20

1. ('99) 22 Mad 164 (166) (FB), *Reference Under Stamp Act.*

S 2 (17)—NOTE 22

1. ('82) 8 Cal 254 (259) : 10 Cal L R 33 (SB), *Ex parte Hill*. (In consideration of a former loan being allowed to continue and of an additional loan made by X, Y granted a lease of certain property to X for 20 years upon terms which secured to X the repayment of the whole amount with interest by yearly instalments and at the same time secured to Y a substantial share in the usufruct of the property. It was held that the loan was the consideration for the lease and the lease the consideration for the loan and that neither part of the arrangement was complete without the other.)

2. ('87) 9 All 585 (588) : 1887 All W N 190 (FB), *In the matter of Gajraj Singh*. (Deed executed by X stating that X had borrowed certain sum as earnest money, that X was to supply rab (unrefined sugar liquor) at certain rate in certain quantity and the effects of breach of contract—Land hypothecated—Held that this was a combination of a mortgage deed and a bond chargeable with highest of the two duties.)

- ('36) 23 AIR 1936 All 481 (483) : 58 All 1083 : 163 Ind Cas 614 (SB), *In re Board of Revenue*. (A document contained a stipulation that a party who had received money from the other party had mortgaged his sugarcane crop standing in certain field. There was another stipulation that the executant would supply the aforesaid crop exclusively to the other

party—Document held mortgage and a bond.)

Also see S. 2 (5) Note 13, S. 6 Note 7 and Art 15 Note 6.

S 2 (17)—NOTE 23

1. ('85) 9 Bom 435 (437) (SB), *Damodar Gangadhar v. Vamanrav Lakshman*. (Where a mortgage bond contains stipulations under which the mortgagor engages to repay the mortgagee any costs he may incur in suits brought against him by the mortgagor's co-sharers and also any debts charged upon the mortgage property which the mortgagee may pay, the stipulations do not create any fresh obligation, and require no additional stamp duty.)

Also see S. 2 (5) Note 12, S. 5 Note 5 and Art. 34 Note 3.

2. ('88) 11 Mad 39 (40) (FB), *Reference under Stamp Act*. (An agreement entered into by the Secretary of State and a salt contractor recited that the contractor has deposited certain promissory notes to secure the due fulfilment of the contract and provided that the promissory notes should be returned on the due fulfilment of the contract. Held that the agreement was a mortgage and the indemnity clause being incidental to all mortgage-deeds was not liable to separate duty.)

Also see S. 5 Note 5 and Art. 5 Note 3.

S 2 (17)—NOTE 24

1. ('35) 22 AIR 1935 Bom 256 (257) : 59 Bom 469 : 156 Ind Cas 960 (SB).

Also see S. 29 Note 7 and Art. 40 Note 2a.



consent of the parties. Beaumont C. J. who delivered the judgment of the Special Bench observed as follows :

"An Act imposing taxation always has to be construed strictly, that is to say, the Crown has to show that the tax in question is imposed upon a fair construction of the language used ; and having regard to the fact that the Schedule does not expressly refer to any decree of Court except a decree for partition, and to the fact that the definition of 'mortgage-deed' does not in terms clearly include a consent decree creating a charge, coupled with the fact that S. 29 seems to indicate that such a consent decree was not intended to be included in such definition, I think we must hold that decrees of this nature are not liable to stamp duty."

25. **Security Bond.**—See Notes on Art. 57.

26. **Stamp affixed whether determines valuation for the purpose of registration.**—Section 14 of the Registration Act, XVI of 1864, provided that the value of the right, title, or interest in any immovable property created, declared, transferred, or extinguished by any instrument shall be taken to be the value indicated by the stamp affixed thereto or impressed thereon under the Stamp Act (X of 1862). That section, it was held in the undermentioned case,<sup>1</sup> contemplated only cases where there was no fixed or definite value of the interest stated in the deed. Hence where in a mortgage-deed the amount of mortgage-money was definitely stated the fact that a stamp of a particular denomination was affixed was irrelevant for deciding whether the deed was compulsorily registrable or not.

"Paper."

\*(18) "paper" includes vellum, parchment or any other material on which an instrument may be written :

#### Synopsis

- |  |  |
|--|--|
| 1. "Paper."                                | 4. "Parchment."                          |
| 2. "Includes." See S. 2 (General), Note 2. | 5. "Instrument." See Notes on S. 2 (14). |
| 3. "Vellum."                               | 6. "May be written."                     |

1. "Paper."—The sub-section is intended to make it clear that for the purposes of this Act, the word "paper" is used in a special sense as including not only what is ordinarily understood as "paper" in common parlance but also anything else on which an instrument may be written. The sub-section itself mentions certain examples of such material, namely, vellum and parchment. As instances of other kinds of material which may be used for writing documents may be mentioned palm leaves on which documents were usually written in this country,<sup>1</sup> copper plates, etc. Even stone slabs may be used for the purpose of recording instruments and when they are so used they will be "paper" within the meaning of this Act.

But in spite of this extensive meaning of the word "paper" it may be necessary to engross a document only on paper in the ordinary sense of the term in order to have it properly stamped under this Act. The rules as to stamping (See S. 10 and Notes thereon) may necessitate that the document must be engrossed only on paper

\*[1879—S. 3 (14) ; 1869—S. 3 (21) ; 1862—S. 56. Cf. (1870) 33 & 34 Vict., C. 97—S. 2 (2) ; (1891) 54 & 55 Vict. C. 39—S. 122 (1), para 2.]

#### S 2 (17)—NOTE 26

1. ('71) 7 Beng L R 14 (19) : 15 Suth W R 331 (DB), *Ishan Chandra v. Sujan Bibee*.

#### Section 2 (18)—NOTE 1

1. See also ('14) 1 AIR 1914 Low Bur 219 (219, 220) : 7 Low Bur Rul 77 : 22 Ind Cas 75 (FB), *In re Chet Po*. (There was a universal custom in Upper Burma to write formal documents on palm leaf or parabaik.)



But the Stamp Rules contain special provision for getting instruments written on parchment impressed with the proper stamp by duly constituted authorities (See Stamp Rules, 1925, R. 10 and App. III thereto.) Compare also Bengal Regulation I of 1814, (under which it was provided that persons desirous of having any instrument executed on vellum, parchment, or any other material instead of paper, or *taur pattah* were entitled to have the same stamped on paying the established duty.

- “Policy of insurance.”      **\*(19) “policy of insurance” includes—**

- a.      a[\*                          \*                          \*                          \*                          \*] Sub-clause (c) and the word "and" prefixed thereto were **repealed** by S. 2 of the Indian Stamp (Amendment) Act, 1906 (V of 1906). The *repealed* sub-clause (c) was as follows :

## Synopsis

1. **Legislative changes.**—In the Acts of 1860 and 1862 there was no definition of “policy of insurance.” Policies of insurance were, however, liable to stamp duty under those Acts.<sup>1</sup>

\*[1879—S. 3 (15) paras. 1 and 2 ; 1869—S. 3 (23). Cf. (1870) 33 & 34 Viet., C. 97—S. 117 (1) ; (1891) 54 & 55 Viet., C. 39—Ss. 91, 98.]

## Section 2 (19)—NOTE 1

1. See Arts. 43 and 44 of Act XXXVI of 1860, and Arts. 55 and 56 of Act X of 1862.



A definition of "policy of insurance" was first introduced in Act XVIII of 1869.<sup>2</sup> This contained only one clause which corresponded in its terms to cl. (a) of this sub-section. A "policy on life" was expressly excluded from the definition. There was no provision for levying stamp duty on a life-policy under this Act.

Subsequently the definition was extended by Act I of 1879 so as to include a life-policy.<sup>3</sup> It was further extended by Act I of 1888 by adding a clause regarding the renewal of a policy of fire insurance. Two more paragraphs were added to this definition by S. 1 of Act VI of 1894, and it was made to include a policy of sea-insurance.

Finally the definition was amended by the present Act so as to make it cover policies of every description including policies insuring against accident or sickness.<sup>4</sup> The definition as to sea-policy was separated as sub-section (20).

Sub-clause (c) of this definition relating to renewal of fire insurance was repealed by S. 2 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

**2. "Policy of insurance."**—A "policy of insurance" has been defined in this sub-section as "including" certain instruments. But this sub-section does not state what is a "policy of insurance."

A policy of insurance may be defined as the formal document embodying a *contract of insurance*.<sup>1</sup>

This sub-section has been made wide enough to include all kinds of insurance. In this respect, it resembles the definition given in S. 91 of the English Stamp Act of 1891, which defines a policy of insurance as including *every* writing whereby any contract of insurance is made or agreed to be made or is evidenced.

The sub-section contains two clauses in which it specifies the documents which are stated to be "included" in the expression "policy of insurance."

Clause (a) deals with insurance against the loss, damage or liability which the assured may sustain from an unknown or contingent event. Clause (b) deals with the policies of life insurance and insurance against risks to the *person*, such as accidents, sickness, etc. Both clauses together are wide enough to cover all kinds of policies of insurance.

Clause (a) defines the nature of the right and obligation created by the instruments covered by the clause. But cl. (b) does not define what is meant by a life-policy or a policy of insurance against accident, sickness, etc. The definition given in cl. (a) sums up the essential elements of a contract of insurance in the class of cases contemplated by the clause, namely, insurance against loss, damage, etc., arising from unknown or contingent events.

Thus, Smith in his book on *Mercantile Law* defines "Insurance" as :

"A contract by which a person, Company, or Society, in consideration of a gross sum or of a periodical payment, undertakes to pay a larger sum on the happening of a particular event. The consideration is termed the premium or

2. See S. 3 (23) of Act XVIII of 1869.

3. See S. 3 (15) of Act I of 1879.

4. See Statement of Objects and Reasons, p. 63.

S 2 (19)—NOTE 2

1. ('44) 31 AIR 1944 Sind 98 (102): ILR (1943) Kar 491: 213 Ind Cas 151, *Ahmed Shah v. Grindlay & Co.* (1925) 1925 App

Cas 639 (642): 94 L J K B 712: 133 L T 151, *Forsikringsaktieselskabet National (of Copen Hagen) v. Attorney-General.* (Per Viscount Cave, L.C.—"Apart from the special rules relating to marine insurance, there is no magic in the word 'policy.' In substance the expression seems to cover a contract of insurance.")



premiums, the party entering into the undertaking the assurer or insurer; the party for whose benefit it is entered into the assured or insured; the happening of the event the risk; and the instrument containing the contract the policy."

Similarly, Channell, J. in *Prudential Insurance Co. v. Inland Revenue Commissioners*<sup>2</sup> observed as follows:

"Where you insure a ship or a house you cannot insure that the ship shall not be lost or the house burnt, but what you do insure is that a sum of money shall be paid upon the happening of a certain event. That I think is the first requirement in a contract of insurance. It must be a contract whereby for some consideration, usually but not necessarily for periodical payments called premiums, you secure to yourself some benefit, usually but not necessarily, the payment of a sum of money, upon the happening of some event. Then the next thing that is necessary is that the event should be one which involves some amount of uncertainty.....The remaining essential is that.. the insurance must be against something. The insurance is to provide for the payment of a sum of money to meet a loss or detriment which will or may be suffered upon the happening of the event.

A contract of insurance, then, must be a contract for the payment of a sum of money, or for some corresponding benefit such as the rebuilding of a house or the repairing of a ship, to become due on the happening of an event, which event must have some amount of uncertainty about it, and must be of a character more or less adverse to the interest of the person effecting the insurance."

The assured is required to have an insurable interest in the thing insured, because otherwise he would not be interested in the preservation of the thing insured. It is this factor that distinguishes a contract of insurance from a wagering contract.<sup>3</sup>

**3. "Life-policy"—Clause (b).**—As said already in Note 2, the expression "life-policy" is not defined in this Act. It is conceived it means the same as a "policy of life insurance." In S. 98 of the English Stamp Act, 1891, a "policy of life insurance" is defined as meaning "a policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives except a policy of insurance against accident."<sup>1</sup>

In Halsbury's *Laws of England* "life insurance" is defined as a contract by which the insurer agrees upon the death of the person whose life is insured (commonly called the life insured) to pay a given sum in consideration of the payment by or on behalf of the assured, during the continuance of his life, of certain sums called premiums.<sup>2</sup>

Channell, J. in *Prudential Insurance Company v. Inland Revenue Commissioners*<sup>3</sup> described a contract of life insurance to be one by which persons entitle their executors to receive a sum of money for distribution among their family in the event of their death.

2. (1904) 2 K B 658 (663, 664): 73 L J K B 734: 91 L T 520: 53 W R (Eng) 108.

3. (1904) 2 K B 658 (663): 73 L J K B 734: 91 L T 520: 53 W R (Eng) 108, *Prudential Insurance Co. v. Inland Revenue Commissioners*. (A contract which would otherwise be a mere wager may become an insurance by reason of the assured having an interest in the subject-matter.)

S 2 (19)—NOTE 3

1. 54 and 55 Vic. Ch. 39, Section 98.

2. See Halsbury's *Laws of England*, Vol. 17, para. 1085, page 543.

3. (1904) 2 K B 658 (665): 73 L J K B 734: 91 L T 520: 53 W R (Eng) 108.



**Endowment policy.**

In case of life policies it is sometimes provided that the sum assured shall be payable either upon the assured reaching a certain age or upon death, whichever first happens. In some cases a larger sum is made payable in the former event. But this difference is immaterial and in either case it is a policy of life insurance. Because, the contract depends on the life of the assured or on an event which depends on the life of the assured.

Thus, where by an instrument it was contracted that, in consideration of the payment by a person of a weekly premium, a sum certain was to be paid to him on his attaining the age of 65, or, in the event of his dying under that age, a smaller sum was to be paid to his executors, it was held that the contract in question, taken as a whole, was clearly a contract of life insurance within the meaning of the Stamp Act.<sup>4</sup> In that case Channell, J. was strongly of opinion that even if the endowment portion of the policy had stood alone and if the contract had purported to be nothing more than a provision against old age, it would have still been a policy of life insurance.

**Examples of life-policies.**

The certificate of membership of a Provident Society purporting to insure the life of the member, making the sum assured payable to a third person named therein on the death of the member has been held to be a policy of life insurance chargeable under Art. 47 (d) of Sch. I.<sup>5</sup>

An Entrance Certificate granted under the rules of a certain "Uncovenanted Service Family Pension Fund" was held to be a life-policy within S. 3 (15) of the Stamp Act of 1879. The reason given was that by the contract which was evidenced by the document, the person to whom the certificate was issued in consideration of a money payment, secured an income after his death for a time to another person subject to certain contingencies.<sup>6</sup>

4. "Accident insurance."—Under cl. (b), a policy of insurance against "accident" is included within the definition of a "policy of insurance" for the purposes of this Act. The Act does not define what is meant by insurance against accident.

"Policy of insurance against accident," as defined in S. 98 of the English Stamp Act, 1891, means

"a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury and includes any notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publication containing the notice only from accident or violence or otherwise than from a natural cause."<sup>1</sup>

Where an insurance company by a policy granted to employers of labour agreed to pay, for and on behalf of the employers, such sums as they should become liable to pay under the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), the Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), or by the common law, in respect of

4. (1904) 2 KB 658 (664, 665): 73 LJKB 745: 91 L T 520: 53 WR (Eng) 108, *Prudential Insurance Co. v. Inland Revenue Commissioners*.

*In re the Himat Provident Society Limited* 6. ('92) 19 Cal 499 (503) (DB), *Reference under Stamp Act, 1879, S. 46.*

S 2 (19)—NOTE 4

5. (1901) 25 Bom 376 (377): 3 Bom LR 43, 1. 54 and 55 Vic. Ch. 39, Sec. 98.

2 SA. 11.



personal injury to any workman in their employ, it was held that the instrument was in truth and substance a contract of indemnity and not "a policy of insurance against accident" within the meaning of S. 98 of the English Stamp Act, 1891. Because in this case the payment was not a payment agreed to be made upon the death of a person otherwise than from a natural cause, or as compensation for personal injury, but was a payment agreed to be made as indemnity against claims for compensation for which the assured was answerable.<sup>2</sup> Such a policy will be covered by cl. (a) of this sub-section, which expressly includes insurance against any *liability* arising from an unknown or contingent event.

5. "Marine insurance."—Though a policy of sea-insurance is expressly defined in S. 2 (20), cl. (a) of this sub-section is wide enough to cover marine insurance.

6. Cattle insurance.—A policy on the lives of cattle was held to be a policy of insurance within the meaning of the English Stamp Act, 1815 (55 Geo. III, Ch. 184) as cattle were "property" and the Act applied to insurance upon "any property or interest."<sup>1</sup> Such a policy will be covered by cl. (a) of this sub-section.

7. Insurance against liability under Employers' Liability Act.—See Note 4.

8. Insurance and indemnity—Distinction.—The essence of a contract of indemnity is to compensate for the loss sustained by a person in a certain contingency. This feature is present in certain classes of insurance. These are the classes referred to in cl. (a). In these cases the contract is to "indemnify" against loss or damage. That is, the insurer is only liable to pay the actual amount of loss, though the amount assured is fixed.

But in life-insurance and the forms of personal insurance referred to in cl. (b) a *fixed* sum is payable. The reason is that the loss, etc., due to death or bodily injury cannot be measured in money. Such contracts are not, therefore, contracts of indemnity.<sup>1</sup>

According to the definition of "contract of indemnity" given in S. 124 of the Indian Contract Act, the loss occasioned must have been caused by the *conduct* of the promisor himself or by the *conduct* of any other person. According to this definition, therefore, no contract of insurance would be a contract of indemnity, as such contract, if at all, indemnifies only against loss arising from any *event*, and not against loss caused to the assured by the conduct of the insurer or by the conduct of any other person.

9. Policy of insurance and promissory note—Distinction.—A policy of life insurance, though it guarantees the payment of a certain sum of money, is not a "promissory note" as its object is not to merely convey such a promise but to embody a contract containing several stipulations of a complex nature.<sup>1</sup>

See Notes on S. 2 (22).

2. (1899) 1 QB 353 (359) : 68 LJQB 143 : 79 LT 731 : 47 WR (Eng) 396, *Lancashire Insurance Co. v. Inland Revenue Commissioners*.

S 2 (19)—NOTE 6

1. (1849) 4 Ex 65 (76) : 18 LJ Ex 395 : 13 LT (OS) 385 : 154 ER 1127, *Attorney General v. Cleobury*.

S 2 (19)—NOTE 8

1. See Halsbury's *Laws of England*, Vol. 15, para. 870, page 445. (The contract of marine insurance and of fire insurance is a contract of indemnity, but the contract of life insurance and of re-insurance is not.)

S 2 (19)—NOTE 9

1. (1888) 57 LJQB 630 (631) : 21 QBD 352 : 36 WR (Eng) 833, *Mortgage Insurance Corporation v. Inland Revenue Commissioners*.



“Policy of sea-insurance”  
or “sea-policy.”

\*(20) “policy of sea-insurance” or “sea policy”—

- (a) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any (ship or vessel, or upon any goods, merchandise or property of any) description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel ; and
- (b) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea risk within the meaning of clause (a) but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance :

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance :

#### Synopsis

- |  |              |
|--|--------------|
| 1. Legislative changes.  | 3. “Ship.”   |
| 2. “Policy of sea-insurance,” “sea-policy” and “contract for sea-insurance.” | 4. “Vessel.” |

1. **Legislative changes.**—The Acts of 1860 and 1862 contained no *definition* of “policy of insurance” or “policy of sea-insurance.” But separate provisions were made for duty in respect of such policies.<sup>1</sup>

The Act of 1869 contained a definition of policy of insurance. This was in general terms and was wide enough to include a policy of sea-insurance. A life-policy was expressly excluded from the definition.

As regards the duty payable, there was no separate provision in regard to sea-insurance. There was a general provision relating to all policies of insurance.

Section 3 (15) of the Act of 1879 which defined a policy of insurance did not at first contain any specific mention of policies of sea-insurance. But the definition of a policy of insurance as that under the Act of 1869 was wide enough to include sea-insurance. The duty payable was separately provided for in respect of a policy of sea-insurance.

Then, two paragraphs were added by Act VI of 1894 whereby it was expressly provided that a “policy of insurance” included a policy of sea-insurance. The above paragraphs also defined the expressions “policy of sea-insurance” and “contract for sea-insurance.” The definition was on the same lines as in the sub-section.

In the Act of 1899, the *express* provision that a “policy of insurance” shall include a policy of sea-insurance has been omitted. But in other respects, the two paragraphs introduced by Act VI of 1894 have been retained. They have, however,

\*[1879—S. 3 (15) paras. 3 and 4 as added by Act VI of 1894, *Cf.* (1891) 54 & 55 Vict., C. 39—S. 92.]

Section 2 (20)—NOTE 1  
1. See Articles 43 and 44 of Act XXXVI of 1860, and Articles 55 and 56 of Act X of 1862.



been given a separate number instead of being kept as part of the definition of "policy of insurance." The words within brackets, "whether for marine or inland navigation" in cl. (a) are new.

The definition of "policy of insurance" has undergone some change in this Act. But it is wide enough to include a policy of sea-insurance. The definition contained in the sub-section is only a more specific description of such a policy.

## 2. "Policy of sea-insurance," "sea-policy" and "contract for sea-insurance."

### Scope of sub-section.

This sub-section contains a definition of these three expressions.

Clauses (a) and (b) state the meaning of the expressions "policy of sea-insurance" and "sea-policy." The two expressions are treated as synonymous.

The last paragraph of the sub-section explains what is meant by a "contract for sea-insurance."

Clauses (a) and (b) state that the expressions "policy of sea-insurance" and "sea-policy" refer to insurance of certain kinds. It is obvious that the two clauses contemplate that the insurance referred to by them is embodied in a *policy* of insurance though they do not expressly say this. In other words, the two clauses mean that a policy of sea-insurance or a sea-policy must be understood as a *policy* containing an insurance of the type mentioned in the clauses.

The last paragraph does not refer to any '*policy*' of insurance. It only refers to a *contract* for sea-insurance. If such a contract is expressed in a *policy* there would be a policy of sea-insurance or sea-policy. It will, therefore, be seen that a *contract* for sea-insurance is not indetical with a *policy* of sea-insurance.<sup>1</sup> Thus, according to the definition, there can be an *oral* contract for sea-insurance. But a *policy* of sea-insurance necessarily means an *instrument in writing*.

### Policy of sea-insurance or sea-Policy.

This means a policy of insurance as defined in sub-sec. (19) (a) of this section and containing a contract of insurance of any of the kinds specified in cls. (a) and (b) of this sub-section. Clause (a) refers to the insurance of ships or vessels as well as to insurance of goods carried by them. Clause (b) gives an extended meaning to "sea-insurance" in regard to *goods and property* carried so as to cover not only the risk while on board the ship or vessel but throughout the transit from its commencement to the ultimate destination covered by the insurance.

The definition expressly includes insurance not only for marine but also for inland navigation. In this respect "sea-insurance" as defined here is wider than "marine insurance" as defined under S. 1 of the English Marine Insurance Act, 1906. (See below).

### Contract for sea-insurance.

This is defined, as already said, in the last paragraph of this sub-section. This definition refers only to the insurance of goods and property conveyed and does not include the insurance of ships and vessels. But a contract for the insurance of ships and vessels also will be a contract for sea-insurance. The definition does not suggest the contrary though it does not expressly include such a contract.

1. ('03) 30 Cal 565 (575) (DB), *Reference under the Stamp Act, 1899.*



The paragraph falls into two divisions. The first refers to an agreement to take upon oneself the risk attending on the goods shipped while the second refers to an engagement to indemnify the owner of the property against risk, loss or damage. The first part refers obviously to the risk undertaken by the shipowner himself while the second part is general.<sup>2</sup>

A contract of marine insurance is defined in S. 1 of the English Marine Insurance Act, 1906, (6 Edw. VII, c. 41), as "a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure."<sup>3</sup> It will be seen that this definition is wider than the definition of a contract for sea-insurance contained in the last paragraph of this sub-section in that it is not confined to insurance of goods and property carried but is wide enough to include the insurance of the ships and vessels themselves. The definition in the English Act is wide enough to include all the kinds of insurance referred to in cl. (a) except that cl. (a) applies not only to marine but also to inland navigation whereas the English definition referred to above applies only to marine adventure.

**Contract for sea-insurance and policy of sea-insurance or sea-policy—Distinction—Tests.**

It has already been pointed out above that the expressions policy of sea-insurance (or sea-policy) and contract for sea-insurance are not co-extensive in their meanings although a *policy* of sea-insurance necessarily implies a *contract* of sea-insurance.

Under S. 7, a contract for sea-insurance (except in cases covered by S. 506 of the Merchant Shipping Act, 1894), is not valid unless it is expressed in a "sea-policy."<sup>4</sup> Under the English law also a contract of sea-insurance not expressed in a sea-policy is not valid.

Section 7 mentions some essential requisites for the *validity* of a sea-policy. But the section does not state what is a policy of sea-insurance any more than this sub-section. Hence, the word 'policy' must be taken in the sense of the definition given in sub-s. (19) (a)—viz., as covering any instrument containing matter of the nature therein described. In other words, there is no particular form which the instrument must fulfil before it can be considered a *policy* of sea-insurance.<sup>5</sup> Thus, an

2. See ('03) 30 Cal 565 (575) (D B), *Reference under the Stamp Act, 1899*. (NOTE.—The shipowner's contract may be contained in the bill of lading—In such a case it need not be stamped as a policy of insurance—See S. 7 and Merchant Shipping, Act, 1894, S. 506.)

3. See Halsbury's *Laws of England*, Vol. 17, para. 671, pages 335, 336.

4. ('25) 12 AIR 1925 PC 83 (84): 52 Cal 408: 52 Ind App 126: 86 I.C. 545 (PC), *Surajmull Nagoremull v. Triton Insurance Co.* (The enactment of S. 7 is prohibitory—It is not confined to affording a party a protection, of which he may avail himself or not as he pleases—It is not framed solely for the protection of the revenue and to be enforced solely at the instance of the revenue officials, nor is the prohibition limited to cases for which a penalty is exigible—The expression of an agreement for sea insurance, otherwise than in a policy, is a thing forbidden in the public interest, and the statutory insistence on a policy is no mere collateral

requirement or prescription of the proper way of making such an agreement.)

5. ('44) 31 AIR 1944 Sind 98 (102, 103): ILR (1943) Kar 491: 213 I.C. 151, *Ahmad Shah v. Grindlay*. ('95) 19 Bom 130 (132, 133): 1894 Bom P J 11 (FB), *In re Marine Insurance Certificate*.

('23) 10 AIR 1923 Bom 142 (144): 67 Ind Cas 965 (DB), *Tricambji Dambji & Co. v. Verji Kanji*.

(1871) 6 Q B 674 (685): 41 L J Q B 33: 25 LT 490, *Ionides v. Pacific Insurance Co.* (Affirmed in (1872) 7 Q B 517.)

6. ('44) 31 AIR 1944 Sind 98 (102, 103): ILR (1943) Kar 491: 213 I.C. 151, *Ahmad Shah v. Grindlay*. (Where a "Certificate of Insurance" contains the entire contract of insurance including terms covering war risks and risks from strikes, riots and civil commotions, etc., and the terms clearly make out a contract of sea insurance containing all that is necessary in a valid contract of sea insurance, the certificate must be held to be a marine and war insurance policy—



instrument called a certificate of insurance and containing the entire contract of insurance will be a *policy* of insurance although it may be described as a "Certificate of Insurance."<sup>6</sup>

But there must be an *instrument*. An oral contract will not be sufficient.<sup>7</sup>

At the same time, an *instrument* containing a contract of sea-insurance will not necessarily be a *policy* of sea-insurance in every case. In order to be such a policy it must be a *self-contained document* the *dominant intent* of which is to express an agreement of indemnity of the kind described in sub-s. (19) (a). Thus, a *bill of lading* whereby, the shipping company for an increased payment, takes upon itself all risks attending goods while on board of a ship or vessel is not a *policy* of sea-insurance although it contains a *contract* of sea-insurance.<sup>8</sup> The reason is that the dominant purpose of a bill of lading is to express a contract of *conveyance* by water and not a contract of *insurance*.

It may, however, be noted that in such a case, the contract of insurance is not invalid for not being expressed in a *policy* of sea-insurance. Such a contract is covered by S. 506 of the Merchant Shipping Act, 1894, and is expressly saved by S. 7.

Letter of cover or engagement to issue policy of insurance.

Letters of cover, underwriter's slips and engagements to issue a policy, although regarded *in practice* as binding contracts are *not* policies of insurance. They are merely in the nature of a memorandum of proposed insurance.<sup>9</sup>

In other kinds of insurance the proviso under Art. 47, makes letters of cover available as regular policies of insurance on being stamped as such. But by virtue of S. 7, this does not apply to policies of *sea-insurance*.

In *Tricamji Damji v. Virji Kanji*<sup>10</sup> it was held that a document which contained all the terms of a contract of sea-insurance was a policy of sea-insurance although it contemplated the issue of a formal document of insurance later on and was in form a

Such a document can validly be tendered as a marine and war insurance policy under a c. i. f. contract.)

(195) 19 Bom 130 (132, 133): 1894 Bom P J 11 (FB), *In re Marine Insurance Certificate*. (A document which is not a mere slip or memorandum of a proposed insurance, which mentions the sum for which the assurer declares the name of the ship, the voyage and premium, which provides for losses being paid on its production in conformity with certain conditions in the possession of the assurers, which expressly guarantees the payment of losses and claims settled under it and which, on the face of it, does not contemplate the necessity of any other document of a more formal character being passed to the assured, is an instrument which requires to be stamped as a policy under cl. 15, S. 3 of the Stamp Act, (1 of 1879).

7. ('25) 12 AIR 1925 P C 83 (84): 52 Cal 408: 52 Ind App 126: 86 Ind Cas 545 (PC). *Surajmull Nagoremull v. Triton Insurance Co.* (Written quotation of premium accepted orally—No policy.)

8. ('03) 30 Cal 565 (575) (DB), *Reference under the Stamp Act, 1899.*

9. ('95) 19 Bom 130 (132): 1894 Bom, P J 11 (FB), *In re Marine Insurance Co.*

(1898) 2 Q B 351 (356): 67 L J Q B 777: 78 L T 734: 46 W R (Eng) 661, *Home Marine Insurance Co. v. Smith*. (1898) 1 Q B 829 affirmed.)

(1911) 1 K B 137 (143): 80 L J K B 236: 103 L T 767, *Genforsikrings Aktieselskabet v. Da Costa*.

(1871) 6 Q B 674 (685): 41 L J Q B 33: 25 L T 490, *Ionides v. Pacific Insurance Co.*

\* (1866) 36 LJCP 313 (319): 2 HL 296: 16 L T 800: 16 W R (Eng) 38, *Xenos v. Wickham*, (Per Wiles, J.)

(1872) 7 Q B 517 (526): 41 LJQB 190: 26 L T 738: 21 W R (Eng) 22, *Ionides v. Pacific Insurance Co.* (But the 'slip' may be admitted in evidence for collateral purposes, such as to prove misrepresentation, etc.—Affirming (1871) 6 Q B 674).

See Halsbury's *Laws of England*, Vol 17, para. 691, page 348. (The insurance slip is in practice, and according to the understanding of those engaged in marine insurance, the complete and final contract fixing the terms of the insurance and the premium, and neither party can without the assent of the other deviate from the terms agreed on without a breach of faith.)

10. ('23) 10 AIR 1923 Bom 142 (143, 144): 67 Ind Cas 965 (DB).



covering letter. The decision proceeds on the ground that the question is one of substance and not of form. In *In re Marine Insurance Certificate*<sup>11</sup> also a document which provided for its being exchanged for a stamped policy was held to be a policy of sea-insurance.

See also S. 7, Notes 2 and 6.

3. **"Ship."**—This has been defined as follows in S. 3 (51) of the General Clauses Act, 1897: " 'Ship' shall include every description of vessel used in navigation not exclusively propelled by oars." Thus a "ship" is included in a "vessel." But a "vessel" need not be a "ship."

4. **"Vessel."**—This was defined in S. 3 (20) of the Act of 1879 as follows: " 'Vessel' means anything made for the conveyance by water of human beings or property." This definition has now been omitted. The word has been defined in the General Clauses Act, 1897, S. 3 (56) as follows: " 'Vessel' shall include any ship or boat or any other description of vessel used in navigation."

\*(21) **"power-of-attorney"** includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it :

Synopsis.

- |                                |   |
|--------------------------------|---|
| 1. Legislative changes.        | 4. Vakalatnama or mukhtearnama.—See Note 3. |
| 2. Power-of-attorney.          | 5. Power-of-attorney and proxy.             |
| 3. Non-liability to court-fee. |   |

1. **Legislative changes.**—There was no corresponding definition of the term "power-of attorney," in the Acts of 1860 and 1862. Section 3 (24) of the Act of 1869 defined the expression as including every instrument (except a proxy) empowering a person to act in the stead of the person executing it. The definition as given in S. 3 (16) of the Act of 1879 provided that a " 'power-of-attorney' means any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act in the stead of the person executing it."

This definition was amended in this Act in two ways :

- The word "means" was replaced by the word "includes."
- The words "in the stead of" towards the end of the definition were replaced by "for and in the name of."

As to the effect of the amendment see Note 2.

2. **Power-of-attorney.**—The term "power-of-attorney" has been defined in Stroud's *Judicial Dictionary* as an authority whereby one is set in turne, stead or place of another to act for him.<sup>1</sup> Wharton's *Law Lexicon* the expression is defined as follows :

"A writing usually, but not always necessarily, under seal authorising another person, who is called the attorney of the person appointing him, to do any lawful act in the stead of another, as to give seisin of lands, receive debts or sue a third person."

\*[1879—S. 3 (16) ; 1869—S. 3 (24).]

11. ('95) 19 Bom 130 (132) : 1894 Bom P J 11 (FB).

Section 2 (21)—NOTE 2

1. See ('37) 24 AIR 1937 Nag 65 (66) : ILR (1937) Nag 494 : 169 Ind Cas 117, *Ramdeo Tilokchand v. Lalu Natha*.



The authority to act "in the stead of" another seems to be the essence of these definitions. The definitions in the Acts of 1869 and 1879 also used the words "in the stead of." These words have now been changed into "for and in the name of."

The words "in the stead of" mean "as a substitute for." So, the ordinary meaning of the expression "power-of-attorney," without the aid of the definition in this clause, is wide enough to include a power to act for and in the name of another—for such a power is clearly a power to act as a substitute for or "in the stead of another."

So, the word "includes" in this clause does not mean that the object of the definition is to *enlarge* the ordinary meaning of the expression "power-of-attorney." Though ordinarily, the use of the word "includes" in a definition clause is intended to widen the meaning of an expression beyond its ordinary limits, the word is also capable of being used simply in the sense of "means" in some contexts. (See S. 2 (General) Note 2.) The present is such a case.

#### Stamp Act.

The definition of power of attorney in S. 3 (16) of the Stamp Act of 1879 read as follows: "Power of Attorney means any instrument (not chargeable with a fee under the law relating to court fees for the time being in force) empowering a specified person to act in the stead of the person executing it." The definition in S. 3 (24) of the Act of 1869 ran as follows: "Power of attorney includes every instrument except a proxy empowering a person to act in the stead of the person executing it." It will be seen that the material change in the definition in the present Act is the addition of the words as to the specified person being empowered to act *in the name* of the person executing the instrument. In the remarks about this clause in the Statement of Objects and Reasons it has been said that the amendment has been made in order *to make it clear* that the definition "relates only to powers-of-attorney and does not include all contracts creating the relationship of principal and agent."

From the above, it is clear that every document creating the relationship of principal and agent will not necessarily amount to a power-of-attorney although in every case the agent will have the authority to act on behalf of the principal. A power-of-attorney is a *special* form of agency which enables the agent not only to do things on behalf of the principal so as to bind him but also to use the principal's *name* in the transactions entered into by the agent. For instance, if the agent executes a transfer on behalf of the principal, the agent will be entitled to affix the signature of the *principal* to the deed of transfer and sign such deed as "AB by CD his attorney." In the absence of a power-of-attorney, CD, the agent, will be only entitled to sign as "CD, agent of AB." Similarly, where an agent under a power-of-attorney files a suit on behalf of the principal, the suit is filed in the *principal's name*. Thus, where there is a power-of-attorney, the principal himself figures as a party to the transaction, while in other cases of agency, the principal is only bound by the agent's acts.

Thus, the power to use the principal's *name* requires a special authorisation over and above the authority to act on *behalf* of the principal. This explains the use of both the word "for" and the words "in the name of" in this definition, showing that the authority must be not only to act *on behalf of* another but also to use such another's *name*.

Hence, a mere authority to act on behalf of another will not be sufficient to constitute a *power-of-attorney*, in the absence of the power to use the other's *name*. In



*Walker v. Remmett*<sup>1a</sup> Coltman, J., observed as follows: "Where one is authorised in writing, on behalf of another, and in his name, to do an act, that is an appointment of an attorney within the meaning of the Stamp Act."

### Illustrations.

- (1) A writes a letter to his brother, B, authorising him to sell their joint property. The letter is sufficient authority to B to sell A's interest in the property. But the letter is not a *power-of-attorney*.<sup>2</sup>
- (2) A wrote a letter to B requesting him to send him a certain sum of money as a loan with C, the bearer of the letter and directing B to take C's acknowledgment for the money. It was held that though the letter conferred on C an authority to receive the money it was not a *power-of-attorney* as it did not authorise C to sign the receipt in A's name.<sup>3</sup>
- (3) In *Walker v. Remmett*,<sup>4</sup> a letter of authority was in the following terms: "I authorise you to endorse my name to three bills of exchange now in your possession and which endorsements I undertake shall be binding upon me; and I undertake to pay you the amount of the several bills as they respectively become due, should they not be duly honoured when mature." It was held that the letter was chargeable with stamp duty as a power-of-attorney and not as an agreement. The additional clauses regarding the payment of the bills, etc., did no more than state what the executant was otherwise bound to do under the law and there was also no provision as to *consideration*. It will be noted in the above case that the letter expressly empowers the agent to endorse the *writer's name* on the bills of exchange.

See also the undermentioned case.<sup>4a</sup>

The following cases decided with reference to the previous Acts illustrate what was considered to be a power-of-attorney under those Acts:

1. An instrument authorising a person to receive on behalf of another such sums of money as would become due in the course of execution of a contract of work is chargeable with stamp duty as a power-of-attorney and not as an assignment.<sup>5</sup>

2. A authorised B by an instrument to recover, by suit or otherwise a certain sum of money from C. The instrument also directed that B should, after deducting therefrom the amount of money due to himself and also the expenses incurred in making the recovery, hand over the surplus amount to A. It was held that the instrument operated as a power-of-attorney and not as an assignment.<sup>6</sup>

1a. (1846) 135 ER 1178 (1181): 69 RR 625; 15 LJCP 174: 7 LT (OS) 86. (*Queen v. Kelk*, (1840) 113 ER 924: 12 Ad & El 559, relied on.)

2. ('26) 13 AIR 1926 Lah 229 (229): 92 Ind Cas 990, *Kala Khan v. Nathu Khan*.

3. ('01) 3 Bom LR 697 (698) (SB), *Tribhawan v. Pandurang*. (NOTE.—It may be doubted whether the direction to B to take C's acknowledgment for the money is authority to C to give such acknowledgment.)

4. (1846) 135 ER 1178 (1180, 1181): 15 LJCP 174: 69 RR 625: 7 LT (OS) 86. (*Queen v. Kelk*, (1840) 113 ER 924: 12 Ad & El 559, relied on.)

4a. ('45) 32 AIR 1945 Lah 69 (75) ILR (1946) Lah 185 (SB), *Miran Baksh v. Emperor*.

(Document described as power-of-attorney executed by Government contractor in favour of bank—Bank agreeing to finance contracts—Executant vesting bank with power to collect his dues and to repay itself—Document held was a power-of-attorney, a mortgage deed and an agreement and required to be stamped as such under S. 5.)

5. ('79) 3 Bom 49 (51) (DB), *Bhagvandas Kishordas v. Abdul Husein Mahomed Ali*. (Stamp chargeable under Sch. II Art. 32 of the Act of 1869.)

6. ('70) 7 Bom HCR (AC) 10 (17) (DB), *Pestaji Mancharji v. Joseph Matchett*. (Instrument is properly stamped under Art. 43 of Sch. A of Act of 1862.)



3. Several persons jointly interested in a certain sum of money executed a document whereby a person was authorised to receive payment of the money from an officer who had been directed to refund the money. It was held that the document should be stamped as a power-of-attorney.<sup>7</sup>

4. A document executed by a number of mirasidars of a village, authorising the person in whose favour it was executed to recover for them *Swatantrams* and other continual income appertaining to their rights and distribute among them their respective shares of the profits was held to be a power-of-attorney.<sup>8</sup>

A power-of-attorney may be executed jointly by a number of persons.<sup>9</sup> Similarly, a power-of-attorney may be executed in favour of one person or in favour of two or more persons.<sup>10</sup>

A power-of-attorney in regard to a single transaction is known as a *special* power-of-attorney. A power-of-attorney authorising the agent to act generally or in more than one transaction is known as a *general* power-of-attorney.<sup>11</sup> The stamp duty payable is different in each case. (See Art. 48.)

A power-of-attorney will not cease to be one merely because it authorises the agent to remunerate himself from the moneys he is asked to collect.<sup>12</sup>

The following forms are usually adopted for powers-of-attorney. The use of the words "in my name and on my behalf" may be noted.

#### General power-of-attorney.

Know all men by these presents that I, AB.....do hereby appoint EF.....my attorney "in my name and on my behalf" to do all or any of the things hereinafter mentioned, that is to say.....

#### Special power-of-attorney (for a Court case).

Know all men that I, AB.....being a defendant in a civil suit.....No.....of.....pending in the Court of.....do appoint EF.....attorney in my name and on my behalf to do all or any of the following acts or things in connection with the said suit; that is to say.....

**3. Non-liability to court-fee.**—This clause expressly excludes a document chargeable with court-fee from the definition of a power-of-attorney for the purposes of this Act. Hence, vakalatnamas and mukhtearnamas which are liable to court-fee under Sch.II, Art. 10 of the Court-fees Act will not be powers-of-attorney for the purpose of the Stamp Act.<sup>1</sup> But for this exclusion, they will be "powers-of-attor-

7. ('86) 9 Mad 358 (359) (FB), *Reference under Stamp Act, S. 46.* (As the document authorised the person to do a single act it should be stamped under Sch. I Art. 50 (b) of Act of 1879.)

8. ('92) 15 Mad 386 (389) (FB), *Reference under Stamp Act, S. 46.* (The document in this case expressly referred to the signing of documents, pleadings, etc., and was entitled a "general power-of-attorney"—The Sub-Registrar had impounded the document as being liable to stamp duty as an instrument of trust—The High Court held it was a power-of-attorney.)

9. ('86) 9 Mad 358 (359) (FB), *Reference under Stamp Act, S. 46.*

('92) 15 Mad 386 (389) (FB). *Reference under Stamp Act, S. 46.*

10. See Art. 48.

11. ('16) 3 AIR 1916 Mad 601 (603):38 Mad 134:18 Ind Cas 135 (DB), *Venkatramana Aiyar v. Narasinga Raw.* (A power-of-attorney executed in favour of a person authorising him to present applications for execution of decree, to realise amounts due to the decree-holder, to compromise the claim and to do all other acts relating to the execution of the decree is a general and not special power-of-attorney.)

12. ('70) 7 Bom HCR (A C) 10 (17) (DB), *Pestaji Mancharji v. Joseph Matchett.*

S2 (21)—NOTE 3

1. ('12) 15 Ind Cas 122 (123) (FB) (Lah), *Ganpat v. Prem Singh.*

('11) 33 All 487 (489):9 Ind Cas 617 (FB), *Permanand v. Sat Pershad.*



ney" and so will be liable both to stamp duty under this Act and also to court-fee under the Court-fees Act. With a view to save such documents from this double liability they have been excluded from the definition of "power-of-attorney" under this Act.<sup>1a</sup> But, except for the purpose of the liability to *stamp duty* a vakalatnama is a power-of-attorney, and is effective for any purposes for which a "power-of-attorney" is required under the law.<sup>1b</sup>

A power-of-attorney must be stamped under this Act if it is not chargeable with court-fee. Thus, a *vakalatnama* to conduct a case in a Presidency Small Cause Court not being chargeable with court-fee by virtue of Ss. 3 and 6 of the Court-fees Act, will come under this clause and is chargeable under Sch. I, Art. 48 (b) of this Act.<sup>2</sup> Similarly, it is conceived that a power-of-attorney to institute or defend a suit executed by an officer, warrant officer, non-commissioned officer or private of Her Majesty's army not in civil employment which is exempt from court-fee under S. 19 (i) of the Court-fees Act would be chargeable with stamp duty under this Act.

There is a difference of opinion as to whether a mukhtearnama or vakalatnama executed in favour of a person who is not a certificated mukhtear or pleader should be stamped under this Act or the Court-fees Act. According to a Full Bench decision of the Allahabad High Court<sup>3</sup> the documents referred to in Sch. II, Art. 10 of the Court-fees Act are restricted to documents given to and presented by duly certificated mukhtears or pleaders under the Legal Practitioners Act and therefore a mukhtearnama in favour of a person who is not a certificated mukhtear falls within the definition under this clause and is chargeable with a stamp duty under this Act. A contrary view has, however, been taken in the undermentioned Full Bench decision of the Punjab Chief Court.<sup>4</sup>

A vakalatnama containing a stipulation that the pleader is not bound to appear and act if his fees are not paid in advance has been held to be chargeable under Sch. II, Art. 10 of the Court-fees Act. Such vakalatnama need not be stamped in addition as an agreement under this Act.<sup>5</sup>

In the undermentioned case<sup>6</sup> a vakalatnama authorised a certain pleader to apply for copies of certain papers from the Collector's record. It was held that the making of the application for copies must be regarded as conducting a "case" and therefore the vakalatnama was leviable with duty under Sch. II, Art. 10 of the Court-fee Act and not under this Act.

A pleader who has been authorised under a vakalatnama, stamped under the Court-fees Act, to conduct a case including a power to receive money or document

('33) Mad S M p. 136. (Citing, B P 3337, 9th December 1885.)

('33) Mad S M p. 136 (136). (Citing, B P 3235, 25th November 1885.)

1a. ('37) 24 AIR 1937 Nag 65 (66): ILR (1937) Nag 494:169 Ind Cas 117, *Ramdeo Tilokchand v. Lalu Natha*.

1b ('37) 24 AIR 1937 Nag 65 (66): ILR (1937) Nag 494:169 Ind Cas 117, *Ramdeo Tilokchand v. Lalu Natha*.

[See also ('34) 21 AIR 1934 Bom 299 (302, 303): 58 Bom 597:151 Ind Cas 709 (DB), *Hormusji K. Bhabha v. Nana Appa*, (An advocate acting for his client under a *vakalatnama* does all his work in the name of his client.)]

2. ('34) 21 AIR 1934 Bom 299 (302, 303): 58 Bom 597:151 Ind Cas 709 (DB), *Hormusji K. Bhabha v. Nana Appa*.

Also see Art. 48 Note 3.

3. ('11) 33 All 487 (489): 9 Ind Cas 617 (FB), *Permanand v. Sat Persad*.

4. ('12) 15 Ind Cas 122 (124) (FB) (Lah), *Ganpat v. Prem Singh*. (Dissenting 33 All 487: 9 I. C. 617 (FB).)

5. ('36) 23 AIR 1936 Cal 814 (815): ILR (1937) 1 Cal 461:167 Ind Cas 202 (DB), *Radha Gobinda Sen v. Ram Brahma Mondal*.

Also see Art. 5, Note 3.

6. ('86) 9 Mad 146 (148) (FB), *Reference under Stamp Act, S. 46*. (A "case" as contemplated by Art. 10, Sch. II of the Court-fees Act need not necessarily mean suit or judicial proceeding but would include any petition to a court or officer.)

Also see S. 3 Note 9.



for his client in the course of a case or as a consequence of a decree or order of a Court in such case can receive them without a separate power-of-attorney stamped under this Act.<sup>7</sup>

Under Sch. II, Art. 10 of the Court-fees Act, the authority must be to *conduct a case*. Otherwise, there will be no liability to pay *court-fees*. Thus, a document executed by certain raiyats, authorising a person to receive certain sums which had been ordered to be refunded to the raiyats was held not liable to *court-fees* but liable to *stamp duty* as a power-of-attorney.<sup>8</sup>

A sunnud which authorises a gomastha to *collect rents* generally *and* sue for them, is a *power-of-attorney* to be stamped as such. Payment of court-fee as on a *mukhtearnama* is not enough.<sup>9</sup>

4. Vakalatnama or mukhtearnama.—See Note 3.

5. Power-of-attorney and proxy.—There is no definition of the term “proxy” in this Act. According to the dictionary meaning it means a writing authorising a person to vote on behalf of another. A proxy is therefore a particular kind of power-of-attorney. This is also apparent from the fact that the Legislature has specifically excluded a proxy from being chargeable as power-of-attorney under Art. 48 of the Act. Article 52 of this Act provides for the duty payable on such instrument.

In *R. v. Kelk*<sup>1</sup> certain proprietors signed a note in writing thereby authorising certain persons to act for them in the nomination and appointment of a commissioner. The instrument contained no direction to vote for any particular person. It was held that the instrument required a stamp as a letter of attorney.

“Promissory note.”

\*(22) “Promissory note” means a promissory note as defined by the Negotiable Instruments Act, 1881 ;

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen :

#### Synopsis

- |   |   |
|---|---|
| 1. Previous Acts.   | 11. Intention to make promissory note.<br>See Note 10.                |
| 2. English law.   | 12. Test of negotiability. See Note 10.                               |
| 3. Essentials of a promissory note.   | 13. Agreement and promissory note.                                    |
| 4. Undertaking to pay.  | 14. Debentures, marketable security, etc.                             |
| 5. Express promise to pay. See Note 4.  | 15. Indemnity note.   |
| 6. Acknowledgment of liability not sufficient.<br>See Note 4.   | 16. Collateral agreement for postponement<br>of payment. See Note 10. |
| 7. Unconditional undertaking.   | 17. Demand promissory notes.  |
| 8. Promise to pay at convenience.   | 18. Bank note.  |
| 9. Promise to pay out of a particular fund.   | 19. Currency notes.   |
| 10. Distinction between promissory note and<br>other instruments in which there is a<br>promise to pay money. | 20. Request for loan.   |
|   | 21. Deposit of title deeds as collateral security.                    |

\*[1869—S. 3 (25). Cf. (1870) 33 & 34 Vict. c. 97—S. 49 ; (1891) 54 & 55 Vict. c. 39—S. 33.]

7. ('78) 3 Cal 767 (768) (SB), Anonymous. [See however ('33) Mad S M p. 139 (139). (Citing, B. P. 1365-R. Mis. 12th November 1914—Vakalatnama to claim refund of fine stamped under Art. 10 (a), Sch. II of the Court-fees Act, when produced as authority for payment, requires general stamp under Art. 48 (c) of this Act as a “power-of-attorney.”)]

8. ('86) 9 Mad 358 (359) (FB), *Reference under Stamp Act*, S. 46.

9. ('68) 1 Beng L R (FB) 55 (58) : 10 Suth W R 39 (FB), *Raghu Nandan Thakur v. Ram Charan Kapali*. (Stamp under Art. 43, Sch. A of the Stamp Act (X of 1862).

S 2 (21)—NOTE 5

1. (1840) 113 E R 924 (927) : 9 L J Q B 362.



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|---|---|
| <p>22. Memoranda of sale and purchase. See Note 10.</p> <p>23. Entry in creditor's book. See Notes 4 and 28.</p> <p>24. Insurance policy. See Note 10.</p> <p>25. Receipts. See Note 10.</p> <p>26. Certain sum of money.</p> <p>27. Stipulation for payment of interest.</p> <p>28. Specification of payee.</p> <p>29. Promissory note in favour of community. See Note 28</p> | <p>30. Attested promissory note. See Notes on Section 2 (5).</p> <p>31. Promissory note and bill of exchange. See Notes on S 2 (2).</p> <p>32. Bond and promissory note. See Notes on Section 2 (5).</p> <p>33. Stamp duty payable. See Sch. I, Art. 49.</p> <p>34. Promissory note not duly stamped—Effect. See S. 35 and Notes thereon.</p> <p>35. Suit on original cause of action. See S. 35 and Notes thereon.</p> |
|---|---|

### 1. Previous Acts.

1. The Act of 1879 did not contain any definition of a promissory note.

2. The Act of 1869 (S. 3 (25)) contained a definition to the effect that a promissory note "includes every instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited or on demand or at sight."

Thus, the Act of 1869 also stressed the unconditional or absolute nature of the promise to pay money. There was no exception to this rule. The exceptions have been imported by the present Act. (See second paragraph of this sub-section.) They are based upon the English Stamp Acts of 1870 and 1891.

2. **English law.**—The corresponding section in the English Stamp Act of 1891 is S. 33 which was a reproduction of S. 49 of the Stamp Act of 1870. The second paragraph of the sub-section corresponds to the second sub-section of the above sections.

But in the *first* sub-section, the English Stamp Act does not adopt the definition in the Bills of Exchange Act of 1882, (45 & 46 Vict. c. 61), S. 83, as this clause adopts the definition in the Negotiable Instruments Act. The definition in the English Stamp Act is very much wider than that in the Bills of Exchange Act. It includes "any document or writing (except a bank note) containing a promise to pay any sum of money." Section 83 of the English Bills of Exchange Act is in similar terms to S. 4 of the Negotiable Instruments Act.

3. **Essentials of a promissory note.**—This sub-section adopts the definition of a promissory note contained in S. 4 of the Negotiable Instruments Act.<sup>1</sup> The second paragraph of the sub-section widens, for the purpose of this Act, this definition so as to include certain instruments which would not be promissory notes under the Negotiable Instruments Act.<sup>2</sup> These refer to instruments containing a promise to pay money out of a particular fund or on a certain contingency. But except for this, the essentials of a promissory note are the same for the purpose of both the Acts.

The definition in S. 4 of the Negotiable Instruments Act is as follows :

"A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker,

#### Section 2 (22)—NOTE 3

1. ('36) 23 AIR 1936 PC 171 (173) : 17 Lah 557 : 63 Ind App 279 : 162 Ind Cas 454 (PC), *Md. Akbar Khan v. Attar Singh*. (The Indian Stamp Act does not suffer from the

defect of the English Stamp Act in ignoring the definition in the Bills of Exchange Act, 1882, and enacting a definition of its own.) ('47) 34 AIR 1947 Nag 145 (149) : ILR (1946) Nag 796 : 226 Ind Cas 568 (DB), *Pachkodi Gulab v. Krishnaji*.



to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.”

Thus, the essential elements in a promissory note are :

1. It must *contain* an agreement for the payment of money. (See Note 10.)
2. The agreement must amount to an *undertaking* or promise. (See Note 4.)
3. Subject to the provisions of the second paragraph of this sub-section, the undertaking must be *unconditional*. (See Note 7.)
4. The agreement must be for the payment of *money and money only*. (See Note 26.)
5. The sum payable must be *certain*. (See Note 26.)
6. The instrument must be signed by the maker of the instrument.
7. The money must be payable to or to the order of a *certain* person or to the bearer of the instrument. (See Note 28.)
8. The instrument must not be a bank-note or currency note. (See Notes 18 and 19.)

#### 4. Undertaking to pay.

##### Introductory.

Under the definition of a promissory note in S. 4 of the Negotiable Instruments Act which is adopted by this clause, the central point in a promissory note is that it is an instrument *containing an undertaking to pay* money to another.<sup>1</sup> The second paragraph of this sub-section which has the effect of widening the definition given in the Negotiable Instruments Act for the purpose of this Act does not affect this aspect of the definition.

##### Express promise to pay.

It is not quite clear whether the words “containing an undertaking to pay” mean that an *express* promise to pay is necessary to constitute a promissory note. In some decisions it seems to have been considered that an *express* promise to pay is necessary.<sup>2</sup> Thus, in *Karuthappa Rowthan v. Bava Moideen Sahib*,<sup>3</sup> it was observed that the question whether an instrument is a promissory note should be judged by the words used and that the instrument must contain *in words* an unconditional undertaking to pay a sum of money and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money. But when the Privy Council had occasion to express their view on the question in *Mohammad Akbar Khan v. Attar Singh*<sup>4</sup> they were merely content with remarking that :

##### S2 (22)—NOTE 4

1. ('33) 20 AIR 1933 Mad 306 (307) : 142 Ind Cas 121 (DB), *Venkataratnam v. Butchayya*.

[See ('82) 9 Cal 127 (129) (DB), *Brojo Gobind Shaha v. Goluck Chunder Shaha*. (An account in a *hathchitta*, showing advances of money made to, and part payment made by the defendant, the whole amount being in the handwriting of and signed by the defendant, is admissible in evidence without being stamped as it does not amount to a promissory note.)]

2. ('98) 22 Bom 986 (988) (DB), *Govind Gopal v. Balwantrao Hari*. (Document headed *Khata* or account, mentioning receipt of money and rate of interest and stating “having made an agreement for five months” —Held, not a promissory note.)

\*('13) 36 Mad 370 (372) : 12 Ind Cas 542 (DB), *Karuthappa Rowthan v. Bava Moideen Sahib*.

3. ('13) 36 Mad 370 (372) : 12 Ind Cas 542 (DB). (Held that the document in this case fulfilled this requirement.)

4. ('36) 23 AIR 1936 P C 171 (174) : 17 Lah 557 : 63 Ind App 279 : 162 Ind Cas 454 (PC).



"It is *indeed doubtful*<sup>5</sup> whether a document can properly be styled a promissory note which does not contain an undertaking to pay, not merely an undertaking which has to be inferred from the words used."

Their Lordships preferred to decide the question in the case before them on the broad ground that a document of the type which they had to consider was not and could not be intended to be regarded as a *negotiable instrument*.

But the observations of their Lordships indicate their strong inclination in favour of the view that except in the case of documents in the particular form of words used in illustration (b) of S. 4 of the Negotiable Instruments Act, an *express* promise to pay would be necessary for a promissory note. This illustration has been considered in this Note under the sub-heading "acknowledgment of liability coupled with words importing promise to pay," below.

In the case noted below,<sup>6</sup> the Sind Judicial Commissioner's Court held that an entry in the plaintiff's account, mentioning a certain sum followed by the words "agreed to be paid with interest...." was not an acknowledgment of an existing liability but a *promise* to pay. It is doubtful whether this decision would be correct now after *Mohammad Akbar Khan's* case.

But the promise to pay may be expressed in any words. So long as the words used themselves express the promise, it is immaterial what *form* is used.<sup>7</sup>

But, as will be seen in Note 10 a promise to pay, even though express and free from any element of uncertainty will not be sufficient to create a promissory note, unless it is the dominant, primary feature of the instrument.<sup>8</sup>

5. The italics are ours—Authors.

6. ('16) 3 AIR 1916 Sind 66 (68): 9 Sind L R 150: 32 Ind Cas 582 (DB), *Ramsing v. Parumal*. (Pratt J. C. held, that the words amounted to a promise to pay. Boyd A.J.C. considered that they were ambiguous and capable of meaning an agreement *then* being entered into or one already concluded and only being noted down, and hence surrounding circumstances might be considered in interpreting the document. These showed it to be a promise not already made but being made at that time.)

7. ('14) 1 AIR 1914 Mad 657 (658): 38 Mad 660: 21 Ind Cas 864 (DB), *Muthu Sastrigal v. Visvanatha Pandara*. ("Varthamanam ....I shall in two weeks' time on returning this sum of Rs.....with interest at..... get back this letter"—*Held*, promissory note.)

('35) 22 AIR 1935 Mad 23 (23): 58 Mad 261: 155 Ind Cas 184 (DB), *Chockalingam v. Palaniappa* (Definite promise to pay though in the participial form is enough, (e. g.) ".....Paying the principal and interest as per above I shall take back the letter"—This is promissory note.)

[See (1850) 137 E R 1015 (1017): 19 L J C P 305: 15 L T (OS) 91, *Allen v. Sea Fire and Life Assurance Co.* (Words "credit in cash" held to mean "pay.")]

[See also ('17) 4 AIR 1917 Mad 460 (461): 34 Ind Cas 417 (DB), *Chokhalingam Chetty v. Annamalai Chetty*. (A 'chit' containing promise to pay held to be a promissory note.)]

8. ('23) 71 Ind Cas 968 (969) (Pesh), *Sikandar Shah v. Bhai Ramchand Sant Ram*. ("According to our agreement I would request you to get the execution file consigned to record room. As agreed, I will pay up the remaining Rs. 1,400....without hesitation if God wills."—*Held*, this was not a promissory note—It merely contained a proposal that the oral agreement be acted on but it was not a document *embodying that agreement*.)

('83) 1883 All W N 127 (127) (DB), *Banda Husain v. Yawar Husain*. (Entry in creditor's book:—"Out of Rs. 22-3-0 due to SBH by my late elder brother AHK I have paid Re. 1; balance will be paid by instalments."—*Held*, this was nothing more than an acknowledgment of a debt.)

('36) 23 AIR 1936 P C 171 (174): 17 Lah 557: 63 Ind App 279: 162 Ind Cas 454 (PC), *Md. Akbar Khan v. Attar Singh*. (Deposit receipt with promise to pay at certain time.)

\*('33) 20 AIR 1933 Mad 306 (308): 142 Ind Cas 121 (DB), *Venkataratnam v. Butchayya*. (Promise to pay X in a certain event or to deposit in Court in another event—This is not a promise to pay.)



**Acknowledgment of liability.**

A mere acknowledgment of liability is not sufficient to constitute a promissory note.<sup>9</sup> Although in *Mohammad Akbar Khan's* case above cited, the Privy Council have refrained from giving a categorical answer to the broad question whether an express promise to pay will always be indispensable for a promissory note, they have made it plain that a mere acknowledgment of liability is not sufficient for the purpose. Said their Lordships:<sup>10</sup>

"It is plain that the implied promise to pay arising from an acknowledgment of a debt will not suffice, for the third illustration<sup>11</sup> indicates that an I. O. U. is not a promissory note, though of the implied promise to pay there can be no doubt."

Thus, as pointed out by the Privy Council, illustration (c) under S. 4 of the Negotiable Instruments Act itself shows that mere I. O. U. notes are not promissory notes.<sup>12</sup>

The fact that an instrument which merely contains an acknowledgment of a debt includes also a promise to pay interest will not convert it into a promissory note.<sup>13</sup>

**Acknowledgment of liability coupled with words importing promise to pay.**

Illustration (b) under S. 4 of the Negotiable Instruments Act is as follows: "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received."

The concluding note which follows the illustrations under the section says that the instrument in the above terms is a promissory note.

In *Mohammad Akbar Khan's* case, already referred to, the Privy Council considered the effect of this illustration. Their Lordships first expressed their doubt whether an implied promise to pay would be sufficient for a promissory note. Then, they pointed out that the implied promise to pay arising from the acknowledgment of a

9.\*('98) 21 Mad 49 (50): 7 Mad L Jour 291 (DB), *Tirupathi Goundan v. Rama Reddi*. (Debtor signed and delivered a document to creditor as follows:—"Account executed on....by....to.....amount which I have this day received from you in cash is Rs. 700. This sum I am bound to pay you. Therefore adding to this sum interest at 8 annas p. c. p. m. I am liable to pay."—Held, not a promissory note.)

('39) 43 Cal W N 330 (331), *Lakshmi Narayan v. Nand Kishore*.

('41) 28 AIR 1941 All 158 (161): I L R (1941) All 264: 195 I.C. 60 (DB), *Sushil Chander v. Wali Ullah*.

('36) 23 AIR 1936 PC 171 (174): 17 Lah 557: 63 Ind App 279: 162 Ind Cas 454 (PC), *Md. Akbar Khan v. Attar Singh*.

(1863) 143 E R 489 (489): 14 CB (NS) 370 (371), *Cory v. Davis*. ("I. J. D. have this day borrowed of J. C. £300 at £4 p.c. payable yearly"—Held, not liable to stamp as promissory note.)

('34) 21 AIR 1934 Mad 220 (221): 148 Ind Cas 759, *Vaidinatha Chettiar v. Thirumalai Reddyar*.

[But see ('16) 3 AIR 1916 Bom 214 (214): 33 Ind Cas 366, *Pratabchand Gulabchand v. Purshotamdas Malji*. (22 Bom 986: 21 Mad 49 dissented from.)]

10. ('36) 23 AIR 1936 PC 171 (174): 17 Lah 557: 63 Ind App 279: 162 Ind Cas 454 (PC), *Md. Akbar Khan v. Attar Singh*.

11. The third illustration under S. 4 of the Negotiable Instruments Act, 1881.

12. (1844) 153 E R 90 (90): 13 L J Ex 358: 3 L T (OS) 222, *Melanotte v. Teasdale*.

('28) 15 AIR 1928 Sind 89 (89): 107 Ind Cas 213, *Chetumal Bulchand v. Noorbhoy Jafferji*. (Promissory note is "security" while I.O.U. is not a "security" but merely evidence of a debt.)

(1795) 170 E R 407 (408): 1 Esp 426 (427), *Fisher v. Leslie*. (I. O. U. is neither promissory nor receipt.)

13. ('39) 43 Cal W N 330 (331), *Lakshmi Narayan v. Nand Kishore*. (Promise to pay interest not sufficient to imply promise to pay principal.)

('98) 22 Bom 986 (987) (DB), *Govind Gopal v. Balwantrao Hari*.

('31) 18 AIR 1931 All 302 (303): 131 Ind Cas 135 (DB), *Ratan Singh v. Pirbhu Dayal*. (Mere fact that instrument is described in the body as promissory note is not sufficient.)

(1844) 153 E R 90 (90): 13 L J Ex 358: 3 L T (OS) 222, *Melanotte v. Teasdale*.



debt would not be sufficient for this purpose and that this was shown by the third illustration under the section. Then, referring to the *second* illustration (which is quoted above), their Lordships proceeded as follows :

"The second illustration, however, seems to show that the express words 'I promise' or 'I undertake' are unnecessary. The form of words is taken from an early English case, reported in Selwyn's N. P. 11th Edition, P. 401, from Scacc. M. I. Geo. II MSS.,<sup>14</sup> where, according to the learned author the Court stated that the words 'to be paid' in the document there sued on amounted to a promise to pay, observing that the same words in a lease would amount to a covenant to pay rent. It does not appear to form a useful general illustration except in the case of a document in that particular form of words."

Thus, it would seem that even after *Mohammad Akbar Khan's* case, an acknowledgment of a debt followed by the words "to be paid" etc., i.e., in the form given in illustration (b) under S. 4 of the Negotiable Instruments Act would be a good promissory note. But it is extremely doubtful whether documents not in the particular form of words given in illustration (b) would be promissory notes in the absence of express words of promise. Thus, the documents in question in the cases noted below<sup>15</sup> will not be promissory notes. The case noted below<sup>16</sup> may be taken as covered by illustration (b). The undermentioned decisions<sup>17</sup> cannot be treated as good law now in India.

14. *Casborne v. Dutton*. Selwyn's N. P. 11th Edn. page 401 from Scacc. M. I. Geo II MSS.

15. ('47) 34 AIR 1947 Nag 145 (149, 150) ILR (1946) Nag 796 : 226 Ind Cas 568 (DB), *Pachkodi Gulab v. Krishnaji*. (A document provided as follows: "For making your account of the *sarkhat* I will come on date 22-11-1936 to your place and will give (make the payment.)—Held not a promissory note but an acknowledgment of liability with a promise to pay amount due on taking accounts. ('75) 23 Suth W R 403 (404), *Ferrier (Mrs. A) v. Ram Kalpa Ghose*. (Received from Mem Saheb the sum of Co.'s Rs. 40 and I give interest for one month, two rupees."—Not a promissory note.)

('88) 15 Cal 150 (151, 152) (DB), *Murari Mohun Roy v. Khatter Nath Mullik*. ("This document, a handnote, is executed by me for the purpose of purchasing a ghor. I take from you Rs./- 7. I will pay interest on the sum at half-anna per rupee per mensem. Having received the Rs. 7 in cash, this hand note is executed."—Held, that the document was not a promissory note nor a bond but an agreement to pay.)

('06) 8 Bom LR 644 (646) (DB), *Chandraprasad v. Varajlal*. (Defendant signed a *khata* made up after taking accounts—It ran as follows: "Rs. 291 were found due on account of the previous *khata* having been made up. For the same this *khata* is passed. The same (i.e., the moneys) are payable by me. I am to pay the same whenever you may make a demand therefor."—Held, that the *khata* was not a promissory note within the N. I. Act but that it would be a promise within S. 25 (3), Contract Act.)

('98) 22 Bom 986 (987) (DB), *Govind Gopal v. Balwantrao Hari*. (Document headed

"*Khata*" (or account) "dated....to G from B,"—Then on debit side these words "Rs. .... have been received; for them interest at.... having made an agreement for five months"—Held, not a promissory note.)

('05) 27 All 84 (86) : 1 All L Jour 483 (DB), *Udit Upadhyaya v. Bhawani Din*. ("Account of B. D. K., K. K. and B. K. 8-2-1901 interest 1 p. c. p. m. payable 3-5-1901, Rs. 500 borrowed from U. U. for sugar factory."—No promise to repay—Held, this was mere memorandum or note drawn up between the parties as to a transaction which had just been settled between them which might perhaps amount to acknowledgment but was not promissory note.)

[But see ('81) 3 All 581 (584) : 1881 All W N 49 (FB), *Kanhaya Lal v. Stowell*. (Instrument which ran: "Due to K, cloth merchant Rs. 200 only to be paid next January 1878"—Held, it was a promissory note—Case under Act of 1869.)]

16. (1725) 88 ER 258 (259) : 8 Mod Rep 362 (364), *Morice v. Lee*. ("I do acknowledge myself indebted to A in hundred pounds to be paid on demand for value, received"—Held, promissory note.)

17. ('02) 1902 Pun Re No. 14 p. 51 (52) : 1902 Pun LR No. 3 (FB), *Gurditta Mal v. Dhanna Singh*. ("Rupees 37 which remain due to be paid, to be paid to Gurditta. According to this receipt, thirty seven rupees. to be paid in two or three days. To be paid by Dhanna Singh, Bazas, 10th Poh Sambat 1954. Written by Das Mal, Wadhawa, at the dictation of Dhanna Singh, Stamp affixed .... Signed by Dhanna Singh with his own pen....."—Held, that document was a promissory note as defined in S. 2 (22) of the Stamp Act and not a bond.)



In *Pratabchand Gulabchand v. Purshotamdas Malji*<sup>18</sup> Beaman, J., of the Bombay High Court observed as follows :

"Ordinarily where a person acknowledges to have received a definite sum of money on a certain date for a certain term, there can be no reasonable doubt but that what he means is that on the expiration of that term he is willing to repay the money on demand."

On this view, the learned Judge was strongly inclined to think that an implied promise to pay arising from such words as "I am liable to pay" is sufficient to constitute a promissory note. The above view, it is submitted, must now be definitely treated as not good law after *Mohammad Akbar Khan's* case.

As already seen, an acknowledgment of liability coupled with a promise to pay interest is not a promissory note.

But where, coupled with an acknowledgment of liability, there is an express promise to pay the money the instrument will be a promissory note provided that the dominant object of the note is to embody such promise and not the acknowledgment. The instruments in question in the undermentioned cases<sup>19</sup> which were held to be promissory notes may be regarded as covered by this principle.

Where an account is closed and a certain sum is found due by one party to another and the amount is not paid immediately, it is often the practice in this country for the debtor to give the creditor an instrument referring to the account and containing an undertaking to pay the sum found due with interest. Such an instrument is a promissory note. The reference to the account and the acknowledgment of liability contained in such an instrument does not detract from its character as a promissory note.<sup>20</sup>

('07) 9 Bom L R 1034 (1038), *R. D. Sethna v. Mahomed Shirazi*. ("Sum of Rs....is payable by me and is to be paid on demand"—Held, promissory note—*Casborne v. Dutton*, reported in Selwyn's N. P. 11th Edn., p. 401, from Scacc. M. I. Geo. II Mss., relied on.)

(1836) 150 E R 675 (675) : 6 L J Ex 6, *Brooks v. Elkins*. (11-10-1831, I.O.U. £20 to be paid on the 22nd instant, W. B.)

('81) 3 All 581 584 : 1881 All W N 49 (FB), *Kanhaya Lal v. Stowell*. ("Agra, 14th November 1877. Due to K, cloth merchant, the sum of Rs. 200 only to be paid next January 1878"—Held, Per Spanker, J., it was a promissory note.)

18. ('16) 3 AIR 1916 Bom 214 (214) : 33 Ind Cas 366 (367).

19. ('35) 22 AIR 1935 All 410 (411) : 154 Ind Cas 517, *Lakhmi Das v. Lakho Ram*.

('37) 24 AIR 1937 All 101 (104) : 166 Ind Cas 919 (DB), *Mt. Bibbo v. Gokaran Singh*. (Renewed promissory note.)

('30) 17 AIR 1930 Mad 485 (485) : 124 Ind Cas 53, *Rakhappan Ambalam v. Suppiah Ambalam*. (Do.)

('75) 7 N W P H C R 124 (125) (DB), *Makbul Ahmed v. Mt. Iflikharunnissa Begum*. ("Be it known Rs. 975 are due to you by me—I promise to pay you this sum in two months.... At the time of payment this note is to be returned to me"—Held, promissory note.)

\*('13) 36 Mad 370 (372) : 12 Ind Cas 542 (DB), *Karuthappa Rowthan v. Bava Moideen Sahib*. ("Promissory note executed on.....in favour of....by....In the matter of the purchase of piece goods by me from your shop on this day, the sum found due by me as per patty (list) is Rs. 600.....which sum I promise to you or to your order on demand with interest 1½ p.c. To this effect."—Held, promissory note.)

('01) 3 Bom L R 839 (841) (FB), *Mathurbhai Hirabhai v. Dalpat Damodar*.

('41) 28 AIR 1941 All 158 (161) : ILR (1941) All 264 : 195 Ind Cas 60 (DB), *Sushil Chander v. Wali Ullah*. ("We therefore acknowledge to promise to pay on demand Rs.....with interest at 2 p. c. p. m."—Held, promissory note.)

('14) 1 AIR 1914 Mad 657 (658) : 38 Mad 660 : 21 Ind Cas 864 (DB), *Muthu Sastrigal v. Viswanatha Pandara*. (Varthamnam—"Amount of cash borrowed of you by me is Rs. 350. I shall, in two weeks, time, returning this sum of Rs. 350/- with interest thereon at 1 p.c.p.m. get back this letter."—Held, it is clearly an unconditional undertaking on the face of the document to repay borrowed money and so a promissory note.)

20. ('41) 28 AIR 1941 All 158 (162) : ILR (1941) All 264 : 195 Ind Cas 60 (DB), *Sushil Chander v. Wali Ullah*.

('87) 1887 Bom P. J. 295 (DB), *Abdul Husein v. Kasam*.



**Promise in writing to pay time-barred debt.**

Under S. 25 (3) of the Contract Act, a *promise* in writing to pay a time-barred debt is valid and enforceable. A mere *acknowledgment* of the debt will not, however, be sufficient for this purpose although it *implies* a promise.

In this respect, there is similarity between the requirement of S. 25 (3) of the Contract Act and that under this sub-section. But what is sufficient for the purpose of S. 25 (3) of the Contract Act will not necessarily be sufficient for the purpose of a *promissory note*. In other words, an instrument may contain a *promise* to pay a certain sum of money within the meaning of S. 25 (3) of the Contract Act and yet not amount to a *promissory note*. The undermentioned case<sup>21</sup> contains an instance of the kind. In that case, it was held that as there was no intention to make a promissory note, the instrument was not a promissory note although it contained a promise to pay within the meaning of S. 25 (3) of the Contract Act and not merely an acknowledgment. It was held that the instrument was an *agreement* liable to stamp duty under Art. 5. For a similar instance, see the case noted below.<sup>22</sup>

It is clear that an instrument *may* amount to a promissory note as well as come under S. 25 (3) of the Contract Act. See also Art. 5, Note 16.

5. Express promise to pay.—See Note 4.

6. Acknowledgment of liability not sufficient.—See Note 4.

7. **Unconditional undertaking.**—Under S. 4 of the Negotiable Instruments Act, in order to constitute a promissory note, an instrument must contain an *unconditional* undertaking to pay money.

But for the purpose of this Act, this sub-section adopts an *enlarged* definition of the word promissory note. Under the second paragraph of this clause, the *unconditional* character of the undertaking to pay is not an indispensable element in a promissory note for the purpose of this Act.<sup>1</sup>

The second paragraph provides that for the purpose of this Act a promissory note will include, (in addition to what will be embraced within the definition in the Negotiable Instruments Act) (1) a note promising the payment of a sum of money out of a specified fund *which may or may not be available*, and (2) a note promising the payment of a sum of money upon any condition or contingency which *may or may not be performed or happen*.

The provision is new and is based on S. 49 (2) of the English Stamp Act, 1870 (33 and 34 Vict. C. 97) and S. 33 (2) of the English Stamp Act, 1891 (54 and 55, Vict. Ch. 39) which contain exactly similar provisions.

Thus, a promise which is not unconditional but which is dependent on the availability of a particular fund or the fulfilment of a certain condition is sufficient for the purpose of a promissory note under this Act.

But *subject to the above provision*, the promise in a promissory note must be unconditional both for the purpose of this Act and the Negotiable Instruments Act.

21. ('23) 10 AIR 1923 Cal 659 (662): 79 Ind Cas 77 (DB), *Prasanna Kumar v. Panauilla*. Also see S. 2 (5) Note 8 and Art. 5 Note 16.

22. ('06) 8 Bom L R 644 (646) (DB), *Chandraprasad v. Varajlal*.

S 2 (22)—NOTE 7

1. ('41) 28 AIR 1941 All 158 (160): ILR (1941) All 264: 195 Ind Cas 60 (DB), *Sushil Chander v. Wali Ullah*. (Promise to pay on a contingency is not a promissory note under N. I. Act, but is one under this Act.)



The case of *Venkataratnam v. Butchayya*<sup>2</sup> affords an instance of a document which was held to contain a *conditional* promise to pay but which did not come within the extended definition contained in this clause. In that case, the promise was to pay a certain sum of money to A with this condition that if the Court directed the amount to be deposited in Court, it should be so deposited. Reilly, J. held that this amounted to a promise to pay to A unless the Court directed the amount to be deposited in Court. According to the learned Judge, this was not a promise to pay upon a contingency which may or may not happen within the meaning of this clause.

The reasoning of the learned Judge seems to be faulty. His argument is that such a promise did not amount, grammatically, to pay if something happened or *did not happen*. This, it is submitted with respect, is not correct. The word "unless" means according to the *Concise Oxford Dictionary*, "if not". Hence, a promise to pay unless something happens does not seem to be anything but a promise to pay if something does not happen.

But, his Lordship's view that the extended definition does not cover the case can be supported on another ground. The expression "upon a contingency" in the second paragraph of this clause seems to refer in the context, to the *happening* of the contingency and not to its *not happening*. A promise to pay, therefore, if a certain contingency does *not* happen does not seem to be within the contemplation of the provision. Reference may also be made in this connection to the case of *Mortgage Insurance Corporation Ltd. v. Commissioners of Inland Revenue*.<sup>2a</sup> In that case, there was a policy of insurance which guaranteed the payment of a certain sum at a certain date. The policy further provided that if the assured desired to surrender the policy in the meanwhile, the company would pay him a surrender value to be determined according to the company's tables that might be in force for the time being. It was held that the document was not a promissory note as it did not "contain" a promise to pay a definite sum of money within the meaning of sub-s. (1) of S. 49 of the English Stamp Act of 1870—the word "contain" in the section meaning "consist of" and not merely "include". (See Note 10.) The instrument was not treated as a promise to pay money on a certain contingency (*viz.*, the assured not surrendering the policy before the time fixed for payment), within sub-s. (2) of the section which corresponded to the second paragraph of this section.

Thus, even the enlarged definition under this sub-section is not wide enough to include promises which are not unconditional, in *every case*. Unless the *terms of the second paragraph* are satisfied, a *conditional* promise will not be sufficient for a promissory note even for the purpose of this Act.

In *Yeo v. Dawe*,<sup>3</sup> at the conclusion of the negotiations for the grant of a lease, one of the parties executed the following instrument in favour of the other: "I promise to pay Y, on his signing the lease of the Castle Inn, the sum of £150." The question was whether this was a promissory note under the English Stamp Act 1870 (33 and 34, Vict. C. 97). It was held by the majority of the Court (Brett, M.R. and Baggallay, L. J.) that the instrument was *not* a promissory note. But Bowen, L. J. held to the contrary. The question turned on S. 49 of the Act, sub-s. (2) of which corresponded exactly to the second paragraph of this section. The majority conceded that the words of the sub-section were large enough to include such a promise as that contained in the instrument before the Court. But they held in view of the facts of the case, that the document was not *intended* to be given or taken as

2. ('33) 20 AIR 1933 Mad 306 (307) : 142 Ind Cas 121 (DB).

2a. (1888) 21 Q B D 352 (355, 356) : 57 L J Q

B 630 : 36 W R (Eng) 833.

3. (1885) 53 L T 125 (126) : 33 W R (Eng) 739.



a promissory note and was only a memorandum of the oral agreement which had been entered into previously, Bowen, L. J., held that the Act must be read grammatically and that S. 49 (2) covered the case.

The above decision shows that the second paragraph only dispenses with the necessity of the promise being *unconditional* in certain circumstances. It does not dispense with the other requisites of a promissory note.<sup>3a</sup>

A note promising the payment of money out of a particular fund or upon a particular contingency is not a *negotiable* instrument although it may be a promissory note by virtue of the special provision contained in the second paragraph of this clause.<sup>3b</sup>

Where the promise is unconditional, then, it is clearly a promissory note and no question arises as to whether the terms of the second paragraph are satisfied or not.

A promise to pay money through a certain person does not make the promise a conditional one.<sup>4</sup> Similarly, the fixing of a time<sup>5</sup> or place<sup>6</sup> for payment does not make the promise a conditional one. The statement of the consideration for the note does not make it conditional.<sup>7</sup> Where a document promising to pay a certain sum of money is executed in consideration of the adjustment of a decree and constitutes a complete adjustment of the decree, the promise does not depend on any condition as to stay of execution but is absolute and is sufficient to constitute a promissory note.<sup>8</sup>

As already said, the provision in the second paragraph is new. The Act of 1879 did not contain any definition of a promissory note. The definition contained in S. 3 (25) of the Act of 1869 required that the engagement to pay money must be "absolute" and did not include a conditional promise in any case.

**8. Promise to pay at convenience.**—A promise to pay "at the convenience" of the maker of the note is not an unconditional promise. It cannot, therefore, be a promissory note under the Negotiable Instruments Act.<sup>1</sup>

Though conditional promises are included in the definition under this clause, it is conceived that on the principles discussed in Note 10, a promise to pay at convenience will not be a promissory note even for the purposes of this Act.

**9. Promise to pay out of a particular fund.**—As seen in Note 7, a promise to pay a sum of money out of a particular fund which may or may not be available is

3a. (1888) 21 Q B D 352 (355, 356) : 57 L J Q B 630 : 36 W R (Eng) 833, *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*.

3b. (1888) 21 Q B D 352 (355, 356) : 57 L J Q B 630 : 36 W R (Eng) 833, *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*.

4. ('20) 7 AIR 1920 Lah 374 (375) : 1919 Pun Re No. 148 : 54 Ind Cas 976, *Mela Ram v. Brij Lal*. ("Maarfai BS" who was plaintiff's agent.)

5. ('74) 7 Mad H C R 361 (363) (DB), *Chinna Perumal Naicker v. Annammal*. ("On or before a certain date.")

[See however ('41) 28 AIR 1941 Nag 1 (2) : ILR (1942) Nag 126 : 192 Ind Cas 513, *Ganpatdas v. Harivallabh*. (Document which started with words "I on demand promise to pay" subsequently stated that principal sum with interest would be repaid

in three years—Held that that was not unconditional promise to pay.)]

6. ('02) 4 Bom L R 428 (430) (FB), *Deva Ratna v. Fakir Adam*.

('44) 31 AIR 1944 Bom 235 (235), 219 Ind Cas 272 *Bhagwandas v. Ohhaganlal*.

7. ('41) 28 AIR 1941 All 158 (162) : ILR (1941) All 264 : 195 Ind Cas 60 (DB), *Sushil Chander v. Wali Ullah*.

8. ('82) 8 Cal 534 (536) (DB), *Nasibum v. Preosunker Ghose*. (Case under Act of 1869.) ('33) Mad S. M. p. 141. (Citing B. P. 751-R., Mis., 5th June 1909.)

#### S 2 (22)—NOTE 8

1. ('21) 8 AIR 1921 Bom 336 (337), *Nathoo-bhai Dullabhai v. Himatlal Vastachand*. (1798) 31 E R 189 (189) : 4 Ves 372 (372), *Ex parte Tootell*. (Promissory note payable when the maker is in good circumstances is not valid as a promissory note.)



expressly recognised by the second paragraph of this clause as sufficient to constitute a promissory note. The conditional element in such a promise is no objection to treating the instrument as a promissory note under this Act. In this respect, the law under the English Stamp Acts of 1870 and 1891 is the same. See respectively S. 49 (2) and S. 33 (2) of the two Acts.

As seen in Notes 13 and 14 on S. 2 (2) and (3), an *order* to pay a sum of money out of a particular fund may amount to an equitable assignment of the money in favour of the payee in certain circumstances. But a *promise* to pay a sum of money out of a specified fund amounts only to a promissory note and not to an *assignment* of the fund.

**10. Distinction between promissory note and other instruments in which there is a promise to pay money.**—It will be seen that the central point in the definition of a promissory note in S. 4 of the Negotiable Instruments Act is that about the undertaking to pay money to another. The enlargement of the definition under this clause does not affect this point. So, essentially, a “promissory note” is an instrument promising the payment of money to another.

Is, then, *every* instrument which contains a promise to pay money to another a promissory note? No. The words of S. 4 of the Negotiable Instruments Act, if literally interpreted, are wide enough to cover every instrument of which an unconditional promise to pay a sum of money to a certain person is a part. But, this is not the meaning to be attributed to the section. The literal interpretation will lead to absurd results. It will lead to the result that all sorts of documents as to which it would be ridiculous to suppose that they are promissory notes—such as mortgages, bonds, debentures, policies of insurance, etc.—would come within the definition of promissory notes.

Hence, the accepted construction of the section places certain restrictions on the apparently wide meaning of the definition. Such restriction of the literal meaning of statutory provisions for the purpose of avoiding absurdity is in accord with the well-established principles relating to the construction of statutes.<sup>1</sup>

The definition of a promissory note in S. 49, sub-s. (1) of the English Stamp Act of 1870, is in wider terms than that in S. 4 of the Negotiable Instruments Act and provides that “a promissory note means and includes any document or writing (except a bank note) containing a promise to pay any sum of money.” In spite of the wide language used, it is the established view in England that the definition will not include every instrument which will be covered by the apparent tenor of the section but would include only a limited class of such instruments.

As the words “containing a promise to pay” in the above definition substantially correspond to the words “containing an undertaking to pay” in the definition in the Negotiable Instruments Act, it will be instructive to note what was said about the above definition in the English Stamp Act in a leading decision on the section: *Mortgage Insurance Corporation Limited v. Commissioners of Inland Revenue*.<sup>2</sup> The following passage is taken from the judgment of Lindley, L. J., in the above case:

“What, then, is the meaning of the words in sub-s. (1) ‘any document containing a promise to pay any sum of money’? It has been pointed out by

S 2 (22)—NOTE 10

1. Halsbury's *Laws of England* (1913) Vol. 27, pp. 135-136. (Rule of literal interpretation is not to be followed where it would be repugnant to the general purview. “For the primary meaning is not always the par-

liamentary meaning and any construction which leads to absurd results should if possible be avoided.”) Maxwell, *Interpretation of Statutes*, Fifth Edition, 1912, pages 4 and 325 et. seq.

2. (1888) 21 Q B D 352 (356, 357): 57 L J Q B 630: 36 W R (Eng) 833.



every one who has had to construe the section that those words cannot receive a literal meaning, for, if they did, all sorts of documents as to which it would be absurd to suppose that they would be treated for any purpose as promissory notes, such as bonds, mortgages, &c., which contain a promise to pay, would have to be stamped as promissory notes. To make the section intelligible some rational limitation must be placed upon the words, but the difficulty is to know what limitation. The section speaks of a document containing a promise to pay a sum of money. In my opinion that means a definite sum of money, not a fluctuating or unascertained sum; and I also think that 'containing a promise to pay' must mean that that is the substance of the document, the whole contents; it cannot mean containing a promise to pay forming one of a number of stipulations. If the instrument is not merely a promise to pay but contains a promise to pay in connection with a number of other stipulations, then I think it is not a promissory note within the meaning of this section. Unless some restriction of that kind is placed upon the words of S. 49, they would include every document containing a promise to pay."

The above observations are applicable in their entirety to the words "containing an undertaking to pay" in S. 4 of the Negotiable Instruments Act. In the same case Bowen, L. J. observed as follows:<sup>3</sup>

"Some limitation must be found for the words. In my opinion the true interpretation is that they are meant to include documents the contents of which consist substantially of a promise to pay a definite sum of money and of nothing else."

It may also be noted here that sub-s. (2) of S. 49 of the English Stamp Act of 1870 exactly corresponded to the second paragraph of this clause and provided for the inclusion within the meaning of the term "promissory note" instruments promising to pay money out of a particular fund or on a certain contingency. It was held by the learned Lords in the case discussed above that this provision did not affect the meaning to be attributed to the expression "promissory note" as set out above, namely, that it must be an instrument, "which consists of a promise to pay a definite sum of money and of nothing else."

In *Mohammad Akbar Khan v. Attar Singh*<sup>4</sup> the Privy Council in dealing with the definition under this sub-section adopted a similar interpretation to the one adopted in the English decision considered above. In delivering the judgment of the Board, Lord Atkin observed as follows:

"Their Lordships prefer to decide this point on the broad ground that such a document as this is not and could not be intended to be brought within a definition relating to documents which are to be negotiable instruments. Such documents must come into existence for the purpose only of recording an agreement to pay money and nothing more, though of course they may state the consideration. Receipts and agreements generally are not intended to be negotiable, and serious embarrassment would be caused in commerce if the negotiable net were cast too wide. This document plainly is a receipt for money containing the terms on which it is to be repaid."

Thus, in order to determine whether an instrument is a promissory note it must be seen whether substantially, it only contains a promise to pay a defined sum of

3. (1888) 21 Q B D 352 (358): 57 L J Q B 630: 36 W R (Eng) 833, *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*.

4. ('36) 23 AIR 1936 P C 171 (174): 17 Lah 557: 63 Ind App 279: 162 Ind Cas 454 (P C).  
Also see Note 27.



money and nothing more. In other words, the word "containing" in S. 4 of the Negotiable Instruments Act really means "consisting of" and not "including".

An instrument which contains merely a bare promise to pay money will, therefore, be clearly a promissory note in every case. It was observed by Pollock, B., in *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*:<sup>5</sup>

"It would be easy to say that every instrument was necessarily included which provides simply and purely for the payment of money, whether it be one single payment, or distributed over a period, or to be paid out of a particular fund, or upon any condition or contingency."

A statement of the consideration for the promise is not detrimental to the character of an instrument as a promissory note.<sup>6</sup> Such a statement does not affect its essential character as the vehicle of a simple promise to pay.

But whether what is stated is only the consideration or something more and whether it is such as to affect the essential character of the instrument must be determined on the language of each instrument and the facts and circumstances of the case.<sup>6a</sup>

The test in each case is to see what is the dominant, substantial effect of the instrument. For this purpose, the Court must consider two questions—what is the intention of the parties and what is the instrument in the common acceptance of men of business or persons among whom it is commonly used.<sup>7</sup>

5. (1888) 20 Q B D 645 (651) : 57 L J Q B 174 : 58 L T 769.

6. ('36) 23 AIR 1936 P C 171 (174) : 17 Lah 557 : 63 Ind App 279 : 162 Ind Cas 454 (P C), *Md. Akbar Khan v. Attar Singh*.

[See ('33) Mad S. M. p. 140, 141. (Citing, B. P. 1360-R., Mis., 18th June 1903—A letter written by A to his physician ran as follows:—"Whereas you have been for about (the last) five years rendering (your) services to us as physician, etc., without receiving any fee, a remuneration of Rs.2,000 will, within six months from the date of this letter, be given to you and this letter received back. To this effect this is written and given. Further you will be sent for whenever necessary." Held, that the letter was liable to stamp-duty as a promissory note.)]

6a. ('16) 3 AIR 1916 Sind 66 (68) : 9 Sind L R 150 : 32 Ind Cas 582 (DB), *Ramsing v. Parumal*. (The question whether a document is chargeable as an agreement under Art. 5(c) or as a promissory note under Art. 49 of the Stamp Act, depends on the matter in the writing in excess of that included in the definition. If this excess matter is mere surplusage it does not alter the character of the document and it is a promissory note.)

('37) 24 AIR 1937 All 101 (104) : 166 Ind Cas 919 (DB), *Mt. Biboo v. Gokaran Singh*. (The main thing to consider is whether the document is primarily a promissory note which is insufficiently stamped though incidentally it may amount to a receipt or acknowledgment of liability.)

7. (1887) 20 QBD 645 (651) : 57 LJQB 174 : 58 LT 769, *Mortgage Insurance Corp., v. Commrs. Inland, Rev.*

('36) 23 AIR 1936 P C 171 (174) : 17 Lah 557 : 63 Ind App 279 : 162 Ind Cas 454 (P C), *Md. Akbar Khan v. Attar Singh*. (It was held that the document before the Board was not a promissory note as it was not of the kind which could be regarded as a negotiable instrument—Lord Atkin said it would be a "Somewhat unusual visitor in the accustomed circles of negotiable paper.")

('38) 25 AIR 1938 PC 121 (123) : 32 Sind LR 462 : 173 Ind Cas 736 (PC), *Karam Chand v. Firm Mian Mir Ahmad*.

(1846) 153 ER 745 (758) : 15 LJ Ex 318, *Sibree v. Tripp*. (Promissory note is something which the parties intended to be a promissory note.)

(23) 10 AIR 1923 Cal 659 (662) : 79 Ind Cas 77 (DB), *Prasanna Kuar v. Panaula*. ('41) 28 AIR 1941 All 158 (160) : ILR (1941) All 264 : 195 Ind Cas 60 (DB), *Sushil Chander v. Wali Ullah*. (Primary intention and real characteristic of document are to be considered.)

('33) 20 AIR 1933 Mad 306 (309) : 142 Ind Cas 121 (DB), *Venkataratnam v. Butchayya*.

('41) 28 AIR 1941 Nag 1 (2) : ILR (1942) Nag 126 : 192 Ind Cas 513, *Ganpatdas v. Horivallabh*. (Mere use of words "I promise to pay" does not necessarily make an instrument a promissory note. It is necessary to look into the terms of the document and the surrounding circumstances to see whether it was intended to be a promissory note in the sense of its being intended to be used as a negotiable instrument.)



In some decisions<sup>8</sup> the opinion is expressed that it is immaterial to consider whether the instrument comes within the category of a negotiable instrument as commonly understood by businessmen. But this view must be treated as not good law after the decision of the Privy Council in *Mohammad Akbar Khan's* case above referred to.

A promissory note is essentially a *negotiable* document. No doubt, the statute expressly recognises as promissory notes some instruments which are not negotiable. Thus, a promissory note which is expressly made payable to a certain person only is not negotiable. Similarly, under the second paragraph of this definition, a promise to pay out of a particular fund or on a particular contingency is sufficient for a promissory note although the promissory note in such cases will not be negotiable. But where a case does not come under any such express statutory exception, negotiability is the normal feature of a promissory note. Hence, it is quite legitimate, in a doubtful case, to consider whether the instrument is such as can be regarded as a negotiable instrument.<sup>8a</sup>

At the same time, it must be noted that the tests as to negotiability and intention of parties are only for the purpose of determining whether the essential purpose of an instrument is to record only a promise to pay and nothing more. These tests have no independent value.

Thus, where an instrument is found to contain only a promise to pay and nothing more, it is not further necessary to find if it was *intended* by the parties to be a promissory note. In such a case, it is not open to the Court to hold that the instrument is not a promissory note because it was not *intended* to be a promissory note. To do so would amount to reading into the statute words which are not there.<sup>9</sup>

In some text-books<sup>10</sup> it seems to have been assumed that in order to constitute a promissory note, *in addition to* an instrument being substantially the vehicle of a simple promise to pay and nothing more, it is further necessary that it must have been *intended* by the parties to be a promissory note. For the reason already given, this view is not correct.

Further, it is not correct to speak of the intention of the parties to *make a promissory note*. It is the function of the Court and not of the parties to say under what category a document made by them will fall. The intention of the parties is only

8. ('02) 4 Bom L R 428 (430) (FB), *Deva Ratna v. Fakir Adam*. (Promise to pay at a particular place held to be promissory note.)

('41) 28 AIR 1941 All 158 (160): ILR (1941) All 264: 195 Ind Cas 60 (DB), *Shushil O'lander v. Wali Ullah*.

('16) 3 AIR 1916 Sind 66 (68): 9 Sind L R 150: 32 Ind Cas 582 (DB), *Ramsing v. Parumal*. (Instrument may be promissory note although it may not pass current as such among merchants—Test is not mercantile usage but the terms of the statutory definition.)

8a. See (1907) 1 KB 246 (252), *Speyer Brothers v. Inland Revenue Commissioners*. (Ordinary sense of promissory note, although it does not conclude the matter, is a factor to be considered.)

9. (1885) 53 LT (NS) 125 (126): 33 W R (Eng) 739, *Yeo v. Dawe*. (See the dissenting

judgment of Bowen, L. J.—Case relating to promise to pay on a contingency—Brett M. R. and Baggallay L. J. held it was not a promissory note—Bowen, L. J., differed.) [See also (1900) 69 LJQB 331 (332): 81 LT 755, *Smith v. Dean*. (Document as it is and not circumstances which led up to it must be considered.)]

(1887) 20 Q B D 645 (651): 57 L J Q B 174: 58 LT 769, *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*. (See observations of Pollock B. on p. 651.)

('10) 8 Ind Cas 352 (352) (Mad), *Paramasivan Pillai v. Sankaraya Chitravattiar*. (Document containing unconditional undertaking to pay money is promissory note. It is not necessary to further show that the executant intended to make a promissory note.)]

10. See for instance: Mulla and Pratt's *Stamp Act*. Fourth Edition (1941), page 37; Bhashyam's *Negotiable Instruments Act*, Seventh Edition (1939), page 35.



relevant for the purpose of determining what are the characteristic features of the document. When the characteristic features of the document have been determined with reference to the intention of the parties the language used by them, mercantile usage, etc., it is then for the Court and not for the parties to say under what category an instrument containing such characteristics will fall. So, really in cases relating to promissory notes, the question, if at all, is as to the intention to make a document with the sole object of recording an agreement to pay and not as to any intention to a document bearing a particular denomination in law.

Special mention has to be made of two English decisions on this question of "intention". The first is the case of *Sibree v. Tripp*.<sup>11</sup> In that case the instrument ran as follows: "Memorandum—Mr. Sibree has this day deposited with me £ 500 on the sale of £1000 three per cent. Spanish stock to be repaid on demand." In holding that the instrument was not a promissory note, Pollock C. B. said:

"It is difficult to lay down a rule which shall be applicable to all cases; but it seems to me that a promissory note.....means something which the parties intend to be a promissory note. We cannot suppose that the Legislature intended to prevent parties from making written contracts relating to the payment of money, other than bills and notes; and this appears to me to be merely an instrument recording the agreement of the parties in respect of a certain deposit of money, the consideration of which is stated in the memorandum itself and to be rather an agreement than a promissory note."

It will be seen that the instrument in the above case did not contain an express promise to pay. It also contained matter in excess of what might be regarded as the promise to pay. Under the circumstances, the question naturally fell to be decided as to whether the instrument could be treated as containing nothing but a simple promise to pay and the reference to the *intention* of the parties became necessary.

The second is the case of *Yeo v. Dawe*.<sup>12</sup> In that case, defendant and plaintiff being in treaty with regard to a lease to be granted by plaintiff, defendant signed and gave to plaintiff the following document: "I. J. H. Dawe, promise to pay Mr. Yeo, on his signing the lease of the Castle Inn, Plymouth, the sum of £150—J. H. Dawe." The instrument came within the terms of S. 49 of the English Stamp Act of 1870, sub-section (2) of which corresponded to the second paragraph of this clause. Still, it was held by Brett, M. R. and Buggallay, J. that the instrument was not a promissory note. The reason given was that considering the facts and circumstances of the case, it must be held that the document was not *intended* to be given or taken as a promissory note. Bowen, L. J., dissented from this view. He said:

"I think we ought not to read in to the Act words to the effect that a document is not to be a promissory note for the purposes of the Act because it was not intended to be a promissory note."

With great respect, the view of Bowen, L. J., seems to be the more correct view. It may also be noted that in a later decision,<sup>13</sup> Lord Esher, M. R. (formerly Brett, M. R.) observed:

".....But I may be allowed to say that what I am reported to have said in *Yeo v. Dawe* as to the parties not intending the document to be a promissory note, meant nothing more than that the intention of the parties is an element to be taken into account in considering what is the nature of the document."

11. (1846) 153 E R 745 (748): 15 L J Ex 318.

12. (1885) 53 L T (NS) 125 (126): 33 W R (Eng) 739.

13. (1888) 21 QBD 352 (355): 57 L J Q B 630: 36 W R (Eng) 833, *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*.



To sum up, therefore, in order to amount to a promissory note, an instrument must simply contain a promise to pay and nothing else. Where an instrument contains a *bare* promise to pay and nothing else, it is obviously a promissory note. But where it contains any additional words, it must be seen what is the dominant purpose of the instrument. For this purpose, it is open to the Court to consider what is the intention of the parties and whether the instrument will normally be regarded and understood as a promissory note by the business community.

How the instrument is described by the parties themselves is just one of the elements to be considered and nothing more.<sup>14</sup>

### *Illustrative cases.*

#### **Instruments which are not promissory notes.**

1. An instrument which is mainly a *receipt* is not a promissory note though it may contain a promise to pay.<sup>15</sup>

2. An instrument headed a policy of insurance guaranteed the payment of a certain sum on a certain date but further provided that in case the assured should wish to surrender the policy in the meanwhile, the insurance company would pay him its surrender value according to the tables that might be in force for the time being. It was held that the instrument was not a promissory note.<sup>16</sup>

3. An instrument provided for the payment of a certain sum of money to the promisee unless the Court directed the amount to be deposited in Court, in which case the amount would be deposited in Court. It was held that the instrument was not a promissory note.<sup>17</sup>

<sup>14</sup> See ('31) 18 AIR 1931 All 302 (303): 131 Ind Cas 135 (DB), *Ratan Singh v. Pirbhu Dayal*. (Acknowledgment of debt is not promissory note. Mere fact that instrument is described in the body of the note as a promissory note is immaterial.)

('13) 36 Mad 370 (372): 12 Ind Cas 542 (DB), *Karuthappa Rowthen v. Bava Moideen Sahib* (Instrument headed promissory note—This fact was taken into consideration in holding that it was a promissory note.)

(1887) 20 Q B D 645 (651): 57 L J Q B 174: 58 L T 769, *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*. (The fact that the instrument was called a 'policy of insurance' was discarded.)

15. ('36) 23 AIR 1936 P C 171 (174): 17 Lah 557: 63 Ind App 279: 162 Ind Cas 454 (PC), *Mt. Akbar Khan v. Attar Singh*. ("This receipt is hereby executed by BH for Rs. 43,900 received from.... This amount to be payable after two years. Interest at Rs. 5-4-0 per cent. per annum to be charged. Dated 20.... Stamp has been duly affixed. (Sd.) ....."—Held not a promissory note but only a receipt for money containing the terms on which it is to be repaid.)

('38) 25 AIR 1938 P C 121 (123): 32 Sind L R 462: 173 Ind Cas 736, *Karam Chand v. Firm Mian Mir Ahmad*. ("Received from you this day.... a cheque for Rs.... The amount would be repaid with interest thereon at the rate of.... per cent. Time ten

months. The principal amount will be paid with interest after ten months from this date"—Held documents were clearly never intended to be negotiable instruments and were not promissory notes.)

('13) 19 Ind Cas 436 (437) (Lah), *Lehna Singh v. Ahmad Din*. (Contract for supply of bricks—Defendant signing receipt for bricks sent.)

[See also ('41) 28 AIR 1941 Nag 1 (3): ILR (1942) Nag 126: 192 Ind Cas 513, *Ganpatdas v. Harivallabh*. ("On demand I promise to pay Mr. H. the sum of Rs. 950 only which I have taken this day as a loan in cash.... with interest.... the whole capital as well as interest will be repaid by three years....."—Held that the instrument was intended to be a *memo* of an already concluded oral agreement and not to be a promissory note—AIR 1938 P C 121: 32 Sind L R 462 (PC), Foll.)]

Also see S. 35 Note 19.

16. (1888) 21 Q B D 352 (356): 57 L J Q B 630: 36 W R (Eng) 833, *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*.

(1887) 20 Q B D 645 (652): 57 L J Q B 174: 58 L T 769, *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*.

17. ('33) 20 AIR 1933 Mad 306 (309): 142 Ind Cas 121 (DB), *Venkataratnam v. Butchayya*.



4. An instrument ran as follows :—"Account of money.....Rs.....Interest .....stipulated time for payment....." It was held that the instrument was not a promissory note as there was no intention to make a promissory note. At the same time, it was held that the instrument was not a mere acknowledgment of liability but was a *promise* to pay within the meaning of S. 25 (3) of the Contract Act.<sup>18</sup> It will be noted that the instrument does not contain an *express* promise to pay nor is it worded in the particular form given in illustration (b) under S. 4 of the Negotiable Instruments Act. This will be another reason for holding the instrument not to be a promissory note. See Note 4.

5. A document provided as follows "....the paper for Rs.....which I purchased from you at.....discount, that I sell to you at Rs.....which, at the difference rate of.....is Rs..... due to you and payable on....." Another document between the same parties was similarly worded and after mentioning the amount proceeded: "for which I give you this chitta (writing) the whole amount of which will be paid up in full of this bill on.....and to which no objection will be made...." It was held by the Calcutta High Court that the documents were not mere acknowledgments but promissory notes.<sup>19</sup>

But the Privy Council in *Mohammad Akbar Khan's* case already referred to expressly overruled this decision. The Privy Council held that the document was a *sale note* coupled with an account and in no way resembled a promissory note, or anything capable of being a negotiable instrument.

The Privy Council in the above decision remarked that the view laid down by them as to the meaning of a promissory note would have the effect of overruling "some decisions in the Indian Courts notably the case of *Manick Chand v. Jamoona Doss*" which was the decision above referred to. Hence, other decisions also in which instruments which were not expressive of a mere promise to pay and which could not be regarded as negotiable instruments, had been held to be promissory notes must be treated as having been overruled by the Privy Council in the above case. See also *Ellis v. Ellis*<sup>19a</sup> given in Note 13 in this connection.

6. A mere letter asking the addressee to act in a friendly way and assuring the payment of his dues in a certain time if God wills is not a promissory note.<sup>19b</sup>

7. A document provided as follows :—"For making account of the *Sarkhat* I will come on date 22-11-1936 to your place and will give (make the payment)." It was held by the Nagpur High Court that it was not a promissory note but operated as an acknowledgment of liability with a promise to pay the amount found due on taking accounts.<sup>19c</sup>

#### Instruments which are promissory notes.

1. An instrument ran as follows : "Whereas with regard to glass of H. G. Works, account is due from us, we therefore acknowledge and promise to pay on demand Rs.....with interest....." It was held that the instrument was a promissory note. The references to interest and accounts were not vital matters. Surrounding circumstances also showed that the document was regarded by the parties as a promissory note.<sup>20</sup>

18. ('23) 10 AIR 1923 Cal 659 (662): 79 Ind Cas 77 (DB), *Prasanna Kumar v. Panaula*.

19. ('82) 8 Cal 645 (649): 7 Cal L R 88 (DB), *Manick Chand v. Jamoona Doss*.

Also see S. 2 (5) Note 7 and Art. 1 Note 8.  
19a. (1820) 171 E R 889 (890): Gow 216 (217).

19b. ('23) 71 Ind Cas 968 (969) (Pesh), *Sayad*

*Sikandar Shah v. Firm Bhai Ram Chand Sant Ram*.

('47) 34 AIR 1947 Nag 145 (149, 150): ILR (1946) Nag 796: 226 Ind Cas 563 (DB), *Pachodi Gulab v. Krishnaji*.

20. ('41) 28 AIR 1941 All 158 (160): ILR (1941) All 264: 195 Ind Cas 60 (DB), *Sushil Chander v. Wali Ullha*.



2. An instrument ran as follows"....I will come and pay the said sum to you at your own house in Jalalpore on....." It was held that the instrument was a promissory note.<sup>21</sup>

3. A promissory note payable on demand ought to be stamped as such notwithstanding there may be a collateral agreement between the parties that the holder will not present it for a given time, or, if paid on demand, that the maker should be entitled to discount.<sup>22</sup>

4. A joint and several promissory note contained a clause as follows: "No time given to or security taken from, or composition or arrangement entered into with, either party hereto shall prejudice the rights of the holder to proceed against any other party." It was held that the document was a valid promissory note within S. 83 of the English Bills of Exchange Act of 1882.<sup>23</sup>

For further instances, see Notes 4 and 13.

11. Intention to make a promissory note—See Note 10.

12. Test of negotiability.—See Note 10.

13. Agreement and promissory note.—As seen in Note 10 every instrument containing an unconditional promise to pay money to another will not necessarily be a *promissory note*.

Where an instrument containing a promise to pay money to another does not amount to a promissory note, the question to what class of instruments it belongs for the purpose of the Stamp Act depends on the circumstances of each case. For instance, if the instrument is attested by a witness and is not payable to order or bearer, it may be a "bond". (See Notes on S. 2 (5).) Similarly, the instrument may be a mere "agreement" for the purpose of this Act.

In considering whether a document is an "agreement" or a "promissory note" for purposes of stamp duty, only the *document* and not the circumstances connected with the matter should be looked at.<sup>1</sup> If the document shows upon the face of it *all* the terms of the agreement which has led up to the execution of the instrument it will be stampable as an "agreement". But where it only expresses the obligation undertaken by one party to pay a sum of money to another it is *only* a promissory note although such obligation may be only a part of the arrangement between the parties.<sup>2</sup>

Instruments which were held to be agreements and not promissory notes.

The following are instances of instruments which were held to be *agreements and not promissory notes*:

A document under which the executant undertook to make certain specified payments towards the sum due under it and agreed that his failure to do so should

21. (1944) 31 AIR 1944 Bom 235 (235), 219 Ind Cas 272, *Bhagwandas v. Chhaganlal*.

(1902) 4 Bom LR 428 (430) (FB), *Deva Ratna v. Fakir Adam*.

22. (1970) 5 Beng LR 103 (105): 14 Suth WR (O C) 38 (DB), *Chunder Kant Mukerji v. Kartik Chunder Chaile*.

23. (1903) 1 KB 531 (533): 72 LJ KB 208: 88 LT 52: 51 WR (Eng) 374, *Kirkwood v. Carroll*. (*Kirkwood v. Smith*, (1896) 1 QB D 582 Overruled: *Yates v. Evans*, (1892) 61 LJ QB 446 approved.)

[See also (1892) 66 LT 532 (533): 61 LJ QB 446, *Yates v. Evans*. (Joint and several

promissory note containing clause that "time may be given to either without the consent of the other and without prejudice to the right of the holders to proceed against either party notwithstanding time given to another"—Held that this did not alter the nature of the instrument as a promissory note.)]

Also see S. 5 Note 5.

S 2—(22)—NOTE 13

1. (1900) 69 LJ QB 331 (332): 81 LT 755, *Smith v. Dean*.

2. (1900) 69 LJ QB 331 (332): 81 LT 755, *Smith v. Dean*.



render him liable to forfeit any payments already made and to return a boat which he had bought from the promisee.<sup>3</sup>

A document which, after reciting the consideration proceeded: "I hereby undertake to pay the sum of £17 and to make immediate arrangements with regard to the balance of £550."<sup>4</sup>

The above two examples fall under the principle that a document containing a promise to pay money as well as other stipulations is not a promissory note.<sup>5</sup>

The instrument in *Prasanna Kumar Pal v. Panaulla Miji*<sup>6</sup> was held not to be a promissory note but an agreement because it was not *intended* to be a promissory note.

A document was in these terms: "I, R. E. do this day bargain and agree with W to give him £5 for a cart for the use of my father and do hereby promise and agree to pay him, the said W, without fail in three weeks from the date hereof." It was held that the document was an *agreement* and not a promissory note.<sup>7</sup> It was remarked that if the document was held to be a promissory note, every written memorandum for the purchase of goods where payment is stipulated to be made at a future date would be a promissory note.

Instruments which were held to be promissory notes and not agreements.

A sold to B the lease of a public house. B having failed to obtain from the authorities an order for the transfer of the licence to conduct the public house, A and B came to an agreement. Under this agreement, A was to carry on the business himself till next "transfer day". For doing so, B was to pay him £25. A agreed that this amount might be paid to him on the day of the transfer of the licence, provided B gave him a written document promising to pay the sum on that day. Accordingly, B gave A the following document: "On the day of transfer of licence I agree to pay the sum of £25." It was held that this was a promissory note and not an agreement for purposes of stamp duty.<sup>8</sup> It did not contain all the terms of the agreement between the parties. The words "on the day of the transfer of the licence" only fixed the time of payment and did not amount to an additional stipulation within the meaning of *Mortgage Insurance Company v. Inland Revenue Commissioners*.<sup>9</sup>

See also the dissenting judgment of Bowen, L. J., in *Yeo v. Dawe*<sup>10</sup> which has been considered in Note 7.

For fuller discussion of the principles applicable and further illustrations, see Note 10.

#### 14. Debentures, marketable securities, etc.

1. In *Speyer Bros. v. Inland Revenue Commissioners*<sup>1</sup> the instruments in question were the treasury notes of a foreign government which were described as gold

3. ('15) 2 AIR 1915 Low Bur 70 (71): 8 Low Bur Rul 155: 28 Ind Cas 300, *Katchi Rowther v. Naina Mohamed*.

4. (1909) 25 T L R 53 (54), *Hodgkins v. Simpson*.

5. (1909) 25 T L R 53 (54), *Hodgkins v. Simpson*.

[See also (1909) 25 T L R 497 (497), *Balck v. Picher*. (Held the instrument in the case was a promise with conditional clauses added and hence not negotiable and not a promissory note.)]

6. ('23) 10 AIR 1923 Cal 659 (662): 79 Ind Cas 77 (DB). Also see Art. 5 Note 7.

7. (1820) 171 E R 889 (890): Gow 216 (217), *Ellis v. Ellis*.

8. (1900) 69 L J Q B 331 (332): 81 L T 755, *Smith v. Dean*.

9. (1888) 21 Q B D 352 (355): 57 L J Q B 630: 36 W R (Eng) 833.

10. (1885) 53 L T (NS) 125 (126): 33 W R (Eng) 739.

S 2 (22)—NOTE 14

1. (1907) 1 K B 246 (252): (Affirmed in 1908 App Cas 92.)



coupon treasury notes. Attached to each instrument were coupons for the payment of interest periodically. There was a period fixed for the payment of the principal but there was a provision for payment on notice before maturity. It was held that though the instruments were capable of falling within S. 33 of the English Stamp Act of 1891, they were not what a commercial person would understand by a promissory note and were not such notes for the purpose of the Stamp Act.

2. An American Railway Company, as security for a temporary loan, issued in favour of the lender an instrument which stated that for value received, they promised to pay 12 months after date the amount named in it. It also contained a statement that it was one of a series and was secured by a deposit of gold bonds which (or a sufficient amount of their proceeds) were under an existing trust-deed to be held in trust for the benefit of the holder of the instrument. It was held that the document was not a mere promissory note; that it contained a contract that the holder should be entitled to the benefit of the security mentioned in it and that it was to be stamped as a marketable security.<sup>2</sup>

3. An instrument issued by a company incorporated under the Joint Stock Companies Act purported on the face of it to be a "debenture". Coupons for payment of interest half-yearly were attached to the instrument. The document contained an engagement on the part of the company to pay the amount of the indenture to A B or order on a given day with interest at 5 per cent. It was held that the instrument was a debenture and not a promissory note for purposes of stamp duty. It contained a double promise to pay.<sup>3</sup> For general principles see Notes 10 and 13. For meaning of marketable security see S. 2 (16A). For meaning of debenture, see under Sch. I, Art. 27.

15. **Indemnity note.**—An instrument ran as follows:—"In consideration of your advancing to M and H £250 on their joint and several promissory note I undertake to pay £250 on demand should their note not be met at maturity." It was held that this was not a promissory note within the meaning of S. 33 of the English Stamp Act of 1891.<sup>1</sup>

It will be noted that this is a conditional promissory note which, it may be argued, is covered by the second paragraph of this sub-section. But it cannot be held that the sum payable under the note is certain as the promisee will be entitled under the note only to such amount as he fails to recover from the principal debtors. This was pointed out in the above decision.

16. **Collateral agreement for postponement of payment.**—See Note 10.

17. **Demand promissory notes.**—A promissory note can be made payable *on demand*. A promissory note can also be made payable *to bearer*. But a promissory note made payable to the *bearer on demand* is illegal and void.

Such a promissory note was prohibited by the Paper Currency Act. This Act has now been repealed by the Reserve Bank of India Act, II of 1934. But under S. 31 of that Act, a private person is prohibited from making any promissory note or other engagement for the payment of money payable to bearer on demand. This makes private persons *incompetent* under the law to make promissory notes payable to

2. (1895) 2 Q B 598 (600): 64 L J M C 241: 73 L T 377, *Brown Shiply and Co. v. Commissioners of Inland Revenue*.

3. (1881) 7 Q B D 165 (171): 50 L J Q B 517: 29 W R (Eng) 610: 44 L T 378, *British India Steam Navigation Co. v. Commrs. of*

*Inland Revenue*.

Also see S. 6 Note 7 and Art. 27 Note 1.

S 2 22—NOTE 15

1. (1897) 14 T L R 146 (147), *Dickinson v. Bower*.



bearer on demand and hence, such promissory notes made by private persons are invalid.

A promissory note payable to bearer on demand is invalid although it is made payable in the alternative to a named person or his order or bearer.<sup>1</sup>

### Illustrations.

- (1) A executes a promissory note payable to B on demand.
- (2) A executes a promissory note payable to B or order on demand.
- (3) A executes a promissory note payable to B or order or bearer on demand.
- (4) A executes a promissory note payable to B or bearer on demand.
- (5) A executes a promissory note payable to bearer on demand.
- (6) A executes a promissory note payable to bearer on a specified date.

The promissory notes in illustrations 1, 2 and 6 are valid. The promissory notes in illustrations 3, 4 and 5 are invalid.

Thus, it is the co-existence of the two elements, namely, (i) the note being payable to *bearer* and (ii) its being payable on demand that comes within the prohibition.

A promissory note made payable "whenever *dhani* (the owner or lender) may demand payment thereof" is not payable to *bearer* and does not come within the prohibition of the Paper Currency Act referred to above.<sup>2</sup>

The question whether a promissory note is payable on demand or not is material in connection with the stamp duty payable on the note. Under Art. 49, the stamp duty depends on whether the promissory note is payable on demand or not. A promissory note payable on demand ought to be stamped as such, notwithstanding that there may be a collateral agreement between the parties that the holder will not present it for a given time or that if paid on demand the maker shall be entitled to a discount.<sup>3</sup> The reason is that in applying the Stamp-law, the stamp must be paid on what is stated in the instrument and cannot depend on collateral evidence.

**18. Bank note.**—A bank note is a bill or note for the payment of money to the bearer on demand, issued by a bank.<sup>1</sup> Thus, a bank note *prima facie* fulfils the requirements of a promissory note as defined by S. 4 of the Negotiable Instruments Act, as being an unconditional promise in writing to pay money to another. But, the above definition expressly excludes a bank note and a currency note. Hence, a bank note and a currency note. Hence, a bank note is *not* a promissory note.

Under S. 22 of the Reserve Bank of India Act, 1934, the exclusive right of issuing a bank note is conferred on the Reserve Bank of India and under S. 31 of the above Act, any other bank or person is expressly prohibited from making any promissory

#### S 2 (22)—NOTE 17

1. ('31) 18 AIR 1931 Cal 791 (791): 58 Cal 1453: 135 Ind Cas 288 (DB), *H. V. Low and Co. Ltd. v. Sudhanna Kumar*.
- ('17) 4 AIR 1917 Mad 201 (202): 40 Mad 585: 36 Ind Cas 741 (DB), *Chidambaram, Chettiar v. Ayyasami Thevan*.
- ('28) 15 AIR 1929 All 371 (372): 50 All 839: 115 Ind Cas 630 (SB). *In the matter of S. 25, Paper Currency Act*.

2. ('92) 16 Bom 689 (695) (DB), *Jetha Parkhu v. Ramchandra Vithoba*.

3. ('70) 5 Bong LR 103 (105): 14 Sath WR (OC) 38, *Chandrakant Mookerjee v. Kartik Chandra Chaile*.  
[But see (1867) 3 Bom HCR (OC) 9 (11, 12), *Eastern Financial Association (Limited) v. Pestamji Cursetji Shroff*.]

#### S 2 (22)—NOTE 18

1. *Halsbury's Laws of England* (1907) Vol. I p. 569.



note, etc., payable to bearer on demand. Hence, no bank other than the Reserve Bank of India can issue bank notes in India.

As bank notes are expressly excluded from the definition of a promissory note under S. 4 of the Negotiable Instruments Act, they are not liable to stamp duty *as promissory notes*. They are not also liable to stamp duty *otherwise*. The reason is that under S. 29 of the Reserve Bank of India Act, the Bank is expressly exempted from stamp duty under this Act in respect of bank notes issued by it.

**19. Currency notes.**—A currency note is a note issued by the Government, intended to be legal tender and to be used as money. It is in the form of a promise to pay a specified amount to the bearer on demand. Thus, a currency note also *prima facie* fulfils the requirements of a promissory note as defined by S. 4 of the Negotiable Instruments Act. But as currency notes and bank notes are expressly excluded from the definition they are *not* promissory notes for the purpose of this Act. Even otherwise, a currency note will not be liable to stamp duty, being an instrument executed on behalf of the Crown and as such being exempt from stamp duty under Proviso (1) to S. 3 of this Act.

Under S. 22 of the Reserve Bank of India Act the sole and exclusive right of issuing currency notes of the Government of India is conferred on the Reserve Bank of India.

**20.—Request for loan.**—A letter written by A to B requesting B for a loan and promising to repay the money if advanced within a certain time is not a promissory note.<sup>1</sup>

**21. Deposit of title-deeds as collateral security.**—In *Ramchandra Row v. Sessa Aiyangar*<sup>1</sup> the instrument was in these terms: "On deposit of title-deeds, I promise to pay you or your order Rs. 160 for value received." It was held that the document was a negotiable instrument and not merely a pledge. The grounds of decision were these:

- (1) The words "or order" showed an intention that the instrument was to circulate from hand to hand.
- (2) The allusion to the deposit of title-deeds did not in any way make the payment contingent or otherwise qualify the operation of the document as a negotiable instrument.
- (3) There was nothing to show that the intention was to regard the pledge as the primary transaction and the promissory note only as a further security.

Section 83 (3) of the English Bills of Exchange Act, 1882, expressly provides that a note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof. But there is no similar provision in the Negotiable Instruments Act.

#### S2 (22)—NOTE 20

- 1.†('89) 13 Bom 669 (670), *Dhondbhat v. Atma-ram*.  
 ('83) 1883 Pun Re No. 195 p. 586 (589), *Baiju v. Jowahir*.  
 (1900) 23 Mad 157n: 7 Mad L Jour 220 (221), *Narayanasami Mudaliar v. Lokambal Ammal*.  
 ('03) 27 Mad 1 (3): 14 Mad L Jour 65 (FB), *Bharata Pisharodi v. Vasudevan Nambudri*.  
 (Overruling 16 Mad 283.)  
 [See also (1850) 137 E R 1036 (1039): 19 L J C P 321: 15 L T (OS) 227, *Hudspeth v. Yar-*

*nold*. (Mere proposals—Correspondence admissible without agreement stamp.)]

#### S2 (22)—NOTE 21

1. ('93) 3 Mad L Jour 225 (226) (DB). (Following *Wise v. Charlton*. (1836) 111 E R 979: 4 Ad & E 786.)  
 [See also ('23) 10 AIR 1923 Mad 262 (265): 71 Ind Cas 130 (DB), *Vadamalai Pillai v. Subramania Chettiar*. (Promissory note does not cease to be negotiable by the fact that title-deeds were deposited as collateral security.)]



- 22. Memoranda of sale and purchase.—See Note 10.
- 23. Entry in creditor's book.—See Notes 4 and 28.
- 24. Insurance policy.—See Note 10.
- 25. Receipts.—See Note 10.

26. **Certain sum of money.**—The definition of a promissory note contained in S. 4, Negotiable Instruments Act, which is adopted by this clause for the purpose of this Act requires that an instrument, in order to constitute a promissory note must contain an undertaking to pay a "certain sum of money only" to another. Section 5 of the Negotiable Instruments Act provides, *inter alia*, as follows :

"The sum payable may be 'certain' within the meaning of this section and S. 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due."

Hence, as will be seen in Note 27, a stipulation for the payment of interest is not inconsistent with the character of an instrument as a promissory note.

A promise to pay a sum by a certain number of instalments is not vitiated by any uncertainty as to the sum payable, for the purpose of the definition of a promissory note.<sup>1</sup> The position is not altered by the fact that the instrument provides that on default in the payment of one or more instalments the whole of the balance should become due. But subject to the provisions of S. 5 of the Negotiable Instruments Act, above referred to, the certainty as to the sum payable is a *sine qua non* for a promissory note. On this principle, a promise to pay a specified sum and all other sums that may be due to the promisee is not a promissory note.<sup>2</sup> Where a policy of insurance guarantees the payment of a certain sum on a certain date but provides that if the assured should desire to surrender the policy in the meanwhile, the insurer company would pay him a surrender value according to the tables of the Company that may be in force for the time being the instrument is not a promissory note.<sup>3</sup> See also the case noted below.<sup>4</sup>

Other instances of uncertainty as to the sum payable are contained in the cases noted below.<sup>5</sup>

#### S2 (22)—NOTE 26

1. ('35) 22 AIR 1935 All 410 (411) : 154 Ind Cas 517, *Lakshmi Das v. Lakho Ram*.
2. (1818) 171 E R 677 (677) : 2 Stark 375 (376), *Smith v. Nightingale*.
3. ('88) 21 Q B D 352 (355, 356) : 57 L J Q B 630 : 36 W R (Eng) 833, *Mortgage Insurance Corporation v. Commrs. of Inland Revenue*. (The decision, however, proceeds on the ground not of the uncertainty of the amount promised to be paid but on the ground of the instrument not containing a simple promise to pay a defined sum but also further stipulation.)
4. (1907) 1 K B 246 (252), *Speyer Bros. v. Inland Revenue Commrs.* (Treasury notes of foreign government with coupons attached for payment of interest periodically—Provision for payment on notice before maturity—Indefiniteness of amount so payable—Held not a promissory note. Affirmed in 1908 App Cas 92.)

5. ('47) 34 AIR 1947 Nag 145 (149, 150) : ILR (1946) Nag 796 : 226 Ind Cas 568 (DB), *Pachkodi Gulab v. Krishnaji*. A (document was as follows:—For making your account of the Sarkhat I will come on date 22-11-1936 to your place and will give (make the payment)—Held that the document was not a promissory note but operated as an acknowledgment of liability with a promise to pay the amount found due on taking of accounts.) (1833) 110 E R 589 (589) : 2 L J K B 104, *Bolton v. Dugdale*. (Promise to pay "with interest £.....and also the demands of the sick club at H in part of interest....."—It was uncertain what the demands would be—Held, the instrument was not a promissory note.) (1883) 5 All 562 (563) : 1883 All W N 148 (DB), *Carter v. Agra Savings Bank*. ("I, J. C. M. do hereby promise to pay at A to the Manager of A. S. Bank the sum of Rs. 10 on or before 15-10-'76 and a similar sum monthly every



The promise must relate to the payment of *money*. An undertaking to deliver *grain* cannot constitute a promissory note.<sup>6</sup> Similarly, an agreement to supply *cotton* is not a promissory note.<sup>7</sup>

The promise must relate to the payment of money and *money only*. Hence, a promise to pay a certain sum of money and deliver a certain quantity of grain is not a promissory note.<sup>8</sup> Similarly, a promise to pay money and also to give the promisee a life-policy and the lease of a house is not a promissory note as it contains a promise to pay money and also to do some other act.<sup>9</sup>

**27. Stipulation for payment of interest.**—It has been seen in Note 26 that under S. 4 of the Negotiable Instruments Act, one of the essential requisites of a promissory note is that the sum payable must be “certain”. Section 5 of the Negotiable Instruments Act expressly provides that the sum payable under a note or bill is “certain” although it includes future interest. Hence, the inclusion of a provision for the payment of interest does not affect the character of an instrument as a promissory note.<sup>1</sup>

Even prior to the Negotiable Instruments Act, 1881, it was held in the decisions noted below<sup>2</sup> that a stipulation for payment of interest was not inconsistent with the character of an instrument as a promissory note.

But it has been held that where interest is made payable at certain specified intervals so that the creditor can sue for the interest separately before the principal becomes due, the instrument will not be a promissory note<sup>3</sup> the reason given being that such a clause is repugnant to the essential character of a commercial document negotiable by mere endorsement. In this connection, attention may be drawn to the decision of the Privy Council in *Mohammad Akbar Khan v. Attur Singh*<sup>4</sup> wherein their Lordships have remarked that “serious embarrassment would be caused in commerce if the negotiable net were cast too wide.” See also the undermentioned cases.<sup>5</sup>

succeeding month, for full value and consideration received, dated 9-9-'76.”—Held, not a promissory note—Impossible to say from its language for what period it is to subsist, or whether the Rs. 10 is to be paid only during the life of the present Manager or for the whole life of the promisor.)

6. ('69) 6 Bom H C R (A C) 107 (109), *Lachiram Jayasangji v. Ramji*.

('24) 11 AIR 1924 Oudh 106 (107): 26 Oudh Cas 383: 80 Ind Cas 459, *Abhairaj Kuar v. Data Din*. (Undertaking to deliver a certain quantity of grain on demand.)

Also see S. 2 (5), Notes 6 and 11.

7. ('69) 5 Bom H C R (A C) 151, (153), *Samsuddin Sultan v. Ramji Bhika*.

8. ('82) 4 Mad 296 (297): 4 Ind Jur 507 (FB), *Muthuchetti v. Muthan Chetti*. (Promise to pay money and paddy.)

9. (1849) 4 Ex 410 (415): 19 L J Ex 6: 14 L T (OS) 158: 154 E R 1272, *Follett v. Moore*.

#### S2 (22)—NOTE 27

1. ('41) 28 AIR 1941 All 158 (160): I L R (1941) All 264: 195 Ind Cas 60 (DB), *Sushil Chander v. Wali Ullah*.

('87) 9 All 351 (356): 1887 All W N 49 (SB), *Balbhadar Prasad v. Maharajah of Betia*.

\*('02) 4 Bom L R 912 (914) (DB), *Reference*

*under Stamp Act, S. 60*. (Previous cases in support of the proposition cited.)

('01) 3 Bom L R 839 (841) (FB), *Mathurbhai v. Dalpat*. (Acknowledgment containing express promise to pay principal and interest on demand is promissory note.)

2. ('74) 13 Beng L R (App) 33 (34): 21 Suth W R 446 (DB), *Nundun Misser v. Mt. Chittur Buttee*.

('63) 1 Mad H C R 152 (153), *Hutuman Sahib v. Husain Sahib*. (Case under Act XXXVI of 1860.)

('81) 3 All 260 (265) (FB), *Bansidhar v. Bu Ali Khan*.

3. ('16) 3 AIR 1916 Bom 214 (214): 33 Ind Cas 366 (367), *Pratabchand v. Purshotamdas Malji*.

('23) 10 AIR 1923 Lah 29 (30): 68 Ind Cas 461, *Joti Prasad v. Brij Raj Sharan*.

4. ('36) 23 AIR 1936 P C 171 (174): 17 Lah 557: 63 Ind App 279: 162 Ind Cas 454 (PC). Also see Note 10 and S. 2 (5), Note 6.

5. (1881) 7 Q B D 165 (171): 50 L J Q B 517: 44 L T 378: 29 W R (Eng) 610, *British India Steam Navigation Co. v. Commrs. of Inland Revenue*. (Instrument purporting to be debenture, with coupons for payment of interest half-yearly held to contain a double promise to pay and to be a debenture and not promissory note.)



But the fact that the instrument provides that interest is payable at a certain rate per annum with quarterly rests does not make the instrument other than a promissory note as such a fact does not make the interest capable of being sued for separately.<sup>6</sup>

The fact that interest is made payable only if there should be default in paying the promised sum by a specified date does not make the instrument other than a promissory note.<sup>7</sup>

**28. Specification of payee.**—Under S. 4 of the Negotiable Instruments Act, the instrument must contain a promise to pay money “to or to the order of a certain person or to the bearer of the instrument.” Therefore, unless the instrument is made payable to the bearer it must specify the person to whom or to whose order the money is to be paid.

Under S. 5 of the Negotiable Instruments Act, the person to whom or to whose order the money is to be paid may be a “certain person” within the meaning of S. 4 although he is misnamed or designated by description only.

From the above provisions, it follows that an instrument that does not on its face indicate to whom the money is payable is not a promissory note. Thus, an entry in the creditor’s account book merely stating that a certain amount is due and will be paid and not stating to whom the money is payable will not be a promissory note.<sup>1</sup> It has been held that where a handnote does not mention the name of the payee at all no decree can be passed on such note.<sup>2</sup>

But where it is clear from the instrument itself who the payee is, it is not necessary that the name of the payee must appear in that part of the note which expresses the promise to pay.<sup>3</sup>

(1907) 1 K B 246 (252), *Speyer Brothers. v. Inland Revenue Commrs.* (Treasury notes of foreign government with coupons attached for payment of interest periodically—Held not a promissory note—Affirmed in 1908 App Cas 92.)

6. ('29) 16 AIR 1929 Pat 136 (138): 7 Pat 412: 115 Ind Cas 201 (DB), *Lakshminath v. Benares Bank Ltd.* (AIR 1916 Bom 214 and AIR 1923 Lah 29 distinguished: “Quarterly rests mean nothing more than that when ultimately interest comes to be calculated, it is to be calculated on a certain basis or system and by no means gives the holder or promisee the right to sue for interest apart from the demand for the principal.” In the above cases there was a liability to pay interest before principal had been demanded or due date for such payment had arrived.)

7. ('74) 13 Beng L R (App) 33 (34): 21 Suth W R 446 (DB), *Nundan Misser v. Mt. Chittur Buttee.* (It was argued that the stipulation as to interest was in the nature of a defeasance clause as no interest would be payable if the principal was paid before the specified date, and so might be treated as a bond—Argument was overruled.)

('81) 3 All 260 (265) (FB), *Bansidhar v. Bu Ali Khan.*

('33) Mad S M p. 13. (Citing, B. P. 770, 21st November 1887.)

Also see S. 23 Note 7.

S2 (22)—NOTE 28

1. ('01) 3 Bom L R 699 (702) (DB), *Lala Jethaji v. Bhaga Gopal.*

('03) 1903 All W N 174 (175), *Emperor v. Kallu Mal.*

('34) 21 AIR 1934 Mad 25 (26): 146 Ind Cas 943, *Kadir Moithin Pulavar v. Panduranga Naidu.*

Also see S. 2 (5) Note 6.

2. ('32) 19 AIR 1932 Pat 324 (325): 142 Ind Cas 163, *Brijbhusan Pande v. Ramjanani Kuer.* (The payee can fill in the blank instrument before suing.)

[See also ('12) 17 Ind Cas 915 (915) (Low Bur), *M. N. P. L. Firm v. Kirwan Gyan.* (Blank instrument—Payee can fill in.)]

3. ('16) 3 AIR 1916 Sind 66 (68): 9 Sind L R 150: 32 Ind Cas 582, *Ramsing v. Parumal.*

('25) 12 AIR 1925 Sind 9 (10): 76 Ind Cas 282, *Thakursey Hansraj v. Kishendas Rewachand.*

('35) 22 AIR 1935 Mad 23 (23): 58 Mad 261: 155 I. C. 184 (DB), *Chockalingam Chettiar v. Palaniappa Chettiar.* (Payee must be named in a promissory note—But it is not laid down in any authority in which part of the document the payee is to be named or by what kind of language.)



Thus, an instrument in these terms will be a promissory note : "Received from B....Rs.....which I promise to pay on demand." As money was received from B, he alone could be the payee.<sup>4</sup>

But in some decisions,<sup>5</sup> a contrary view has been taken. It has been held that unless the words of promise themselves say to whom the payment is to be made, the instrument will not be a promissory note. It is submitted with respect that this view is not correct.

The person to whom or to whose order the money is to be paid may be designated by description only and it is not necessary to designate him by name.<sup>5</sup> Thus, a promissory note may be made payable to the manager of a bank.<sup>6</sup> Similarly, a promissory note may be made payable to "Hanuman Glass Works."<sup>6a</sup>

But the payee must be capable of being ascertained at the date of the instrument. Thus, an instrument made payable to the secretary of a club for the time being<sup>7</sup> or to the members of a firm for the time being<sup>8</sup> will not be a promissory note.

An instrument provided for payment to a certain person unless the Court directed the deposit of the amount in Court, in which case, it would be deposited in Court. It was held that the instrument was not payable to a "certain person" and so was not a promissory note.<sup>9</sup> Nor was it a case of alternative payees under S. 13 (2) of the Negotiable Instruments Act.

A promise to pay through another may be sufficient for a promissory note.<sup>10</sup>

An instrument payable to a specified person and not expressed to be payable to order or bearer is not on that account prevented from being a promissory note.<sup>11</sup>

It has been held that an instrument in favour of an indefinite body like the "Vysia community of M" is *valid but not a promissory note*.<sup>12</sup>

29. Promissory note in favour of community.—See Note 28.

30. Attested promissory note.—See Notes on S. 2 (5).

31. Promissory note and bill of exchange.—See Notes on S. 2 (2).

32. Bond and promissory note.—See Notes on S. 2 (5).

33. Stamp duty payable.—See Sch. I, Art. 49.

34. Promissory note not duly stamped—Effect.—See S. 35 and Notes thereon.

35. Suit on original cause of action.—See S. 35 and Notes thereon.

4. (1825) 107 E R 1046 (1048) : 3 L J (OS) K B 185, *Green v. Davies*. (*Chandwick v. Allen*, (1726) 93 E R 797 : 2 Str 706 followed.)

5. ('10) 5 I. C. 110 (113) (DB) (Cal), *Sattya Priya Ghoshal v. Gobinda Mohan Roy*. (Illustration (b) not relied on—Illustrations cannot control plain meaning of section.)

('38) 25 AIR 1938 Nag 464 (464) : 177 Ind Cas 889, *Narbada Prasad v. Mt. Sunki*.

5a. (1854) 97 R R 798 (795, 796) : 23 L J Q B 298 : 23 L T (OS) 187, *Storm v. Sterling*. (It is quite sufficient to make a note by description or *designatio personæ*.)

('30) 17 AIR 1930 Mad 1004 (1007, 1008) : 53 Mad 968 : 128 Ind Cas 870 (DB), *Venkata Rami Reddi v. Sri Bhopal Rao*. (Payee described by office.)

6. ('20) 7 AIR 1920 Pat 157 (158) : 5 Pat L Jour 536 : 58 Ind Cas 265 (DB), *Damodar Das v. Benares Bank Ltd.* (*Meggison v. Hasper*, (1834) 39 R R 784 and *Holmes v. Jaques*, (1866) 1, Q B 376 foll.)

6a. ('41) 28 AIR 1941 All 158 (162) : 1 L R

(1941) All 264 : 195 Ind Cas 60 (DB), *Sushi Chander v. Wali Ullah*.

7. (1854) 97 R R 788 (795, 796) : 23 L J Q B 298 : 23 L T (OS) 187, *Storm v. Stirling*.

8. ('10) 5 Low Bur Rul 102 (107, 108) : 4 Ind Cas 293 (FB), *Yeo Eng Pua v. Chetty Firm*. Also see S. 2 (5) Note 6.

9. ('33) 20 AIR 1933 Mad 306 (307) : 142 I. C. 121 (DB), *Venkataratnam v. Butchayya*. (Payment into the Court is not the same as payment to the plaintiff though it may operate for his benefit.)

10. ('20) 7 AIR 1920 Lah 374 (375) : 1919 Pun Re No. 148 : 54 Ind Cas 976 : *Mela Ram v. Brij Lal*.

11. ('29) 16 AIR 1929 Nag 274 (275) : 25 Nag L R 173 : 118 Ind Cas 673, *Banki Das v. Tanabai*.

('33) Mad S M p. 13. (Citing, B. P. 1867, 26th June 1883.)

12. ('23) 10 AIR 1923 Mad 434 (435) : 72 I. C. 95, *Budhavaram Narsimhulu Chetti v. Subbaraya Chetty*.



“Receipt.”      \*(23) “receipt” includes any note, memorandum or writing—

- (a) where by any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or
  - (b) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or
  - (c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or
  - (d) which signifies or imports any such acknowledgment,
- and whether the same is or is not signed with the name of any person : a[\* \*]

a. The word “and” was omitted by S. 2 and Sch. I of the Repealing and Amending Act, 1928 (XVIII of 1928).

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\*[1879—S. 3 (17), Cf : (1870) 33 & 34 Vict., C. 97—S. 120 ; (1891) 54 & 55 Vict., C. 39—S. 101.]

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### Orders of the Government of India.

Memoranda attached to Railway Exchange Accounts, which are explanatory of entries made in those accounts, and on the strength of which credits are afforded to Railways, are not receipts within the meaning of this clause, and need not therefore be stamped.—Order of the Government of India, Finance and Commerce Department, No. 3707 S. R. dated 5-7-1902, to the Comptroller and Auditor-General.

A question having been raised as to whether the levy of stamp duty should depend on the gross or the net amount payable to a Government servant, it was decided by the Government of India that if the amount of the salary—that is, the gross salary—exceeds twenty rupees, a stamp duty of one anna should be levied under Art. 53 of Sch. I to the Indian Stamp Act, unless the receipt is exempt under the exemptions enumerated in that Article.—Order of the Government of India, Finance Department (Central Revenues) No. R. Dis. No. 23-Stamps/42, dated 14-7-1942.

### Synopsis

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| 14. Money paid without consideration. See Notes on Art. 53.           | 31. Receipt for money drawn from Court.   |
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| 17. Clause (c).   | 34. Time of stamping. See Notes on S. 17.   |



**1. Legislative changes.**—The term “receipt” was not defined in the Acts of 1860, 1862 and 1869. Schedule II, Art. 7 of the Act of 1869, however, made chargeable a receipt or discharge given for or upon the payment of money, or delivery of goods, in satisfaction of a debt, the amount or value of which money or goods exceeded Rs. 20.

The definition as contained in S. 3 (17) of the Act of 1879 was the same as in the present Act except that the word “means” appeared in place of the word “includes” and the words “or advertisement” occurred after the word “writing”. The word “advertisement” is omitted in the present Act as the machinery of the Act is not applicable to advertisements acknowledging receipt of money. (See Statement of Objects and Reasons.)

**2. Analogous law.**—Sub-section (1) of S. 101 of the English Stamp Act, 1891 (54 & 55 Vict., C. 39), runs as follows :

“(1) For the purposes of this Act the expression “receipt” includes any note, memorandum, or writing whereby any money amounting to two pounds or upwards, or any bill of exchange or promissory note for money amounting to two pounds or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of two pounds or upwards, is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person.” The above definition corresponds to cls. (a), (c) and (d) of the sub-section except that the words “deposited or paid” are left out from clause (a).

**3. Scope of sub-section.**—For purposes of stamp duty payable on a receipt, this sub-section must be read along with Art. 53 as that article contains quite a number of exemptions. A document in order to be a receipt must upon its face fall within one of the four clauses specified in the definition and to render it liable to stamp duty the value of the subject-matter of the acknowledgment should exceed Rs. 20.

The definition excludes receipts in respect of immovable property. But the definition shows that a “receipt” may relate not only to money but also to a cheque, bill of exchange or promissory note (cl. a) or even any *other* movable property (cl. b). The definition further shows that a “receipt” need not acknowledge the *receipt* of any thing but may merely acknowledge the *satisfaction* of a debt (cl. c). The acknowledgment may be express or implied (cl. d).

**4. “Acknowledgment.”**—The term “acknowledge” as used in this sub-section must be construed in its restricted sense as owning or admitting a fact in a particular character or relation. Consequently the definition of receipt is applicable only to instruments executed by the payee or creditor in favour of the payer or debtor as the case may be. It will not apply to documents executed in favour of third persons.<sup>1</sup> Thus a memorandum signed by a witness intimating to a Court that he has received his diet money from a party is not a receipt within the definition.<sup>2</sup> Similarly a

#### Section 2 (23)—NOTE 4

1. ('33) 20 AIR 1933 Oudh 51 (52) : 8 Luck 164 : 140 Ind Cas 192 (DB), *Emperor v. Mahipal Singh*.

('04) 2 Low Bur Rul 307 (309) (FB), *Anonymous*.

[See (1927) 2 KB 465 (473) : 96 L J K B 1006 : 137 LT 817, *Midland Bank v. Com-*

*missioners of Inland Revenue*. (A document is not a receipt unless and until it is used as such by being given as an acknowledgment of payment.)]

Also see Note 28.

2. ('33) 20 AIR 1933 Oudh 51 (52) : 8 Luck 164 : 140 Ind Cas 192 (DB), *Emperor v. Mahipal Singh*.

Also see S. 62 Note 15.



certificate filed in Court by a counsel for the receipt of his fees from his client is not a receipt.<sup>3</sup> So also a certificate of payment of premium on an insurance policy issued for the purpose of supporting a claim to exemption from income-tax on such premium is not a receipt.<sup>4</sup>

A bank memorandum informing one of the customers of the bank that money has been paid to his account by a third person and has been credited to his account has been held not to be a receipt as it was not given to the party who paid the money.<sup>5</sup> Where, however, the memorandum is given to the person paying the amount to the credit of a customer, it is a receipt.<sup>5a</sup>

To constitute a receipt it is not sufficient that there should be a statement; there must be an *acknowledgment* either express, signified or imported. Thus, where A made a payment of Rs. 22 to B and at A's request C, a servant of B, made a memorandum in writing to the effect that B had received Rs. 22 it was held that the document was not a receipt as there was no acknowledgment by B.<sup>6</sup>

A memorandum importing that A had paid a sum of money to B but not importing any acknowledgment from B of his having received it is not a receipt.<sup>7</sup>

5. Acknowledgment must be to the person paying.—See Note 4.

6. Banker's advice.—See Note 4.

7. Certificate of receipt.—See Note 4.

8. Advertisements.—See Note 1.

9. Receipt and authority to pay.—In *Regina v. Cooper*<sup>1</sup> an order for the payment of expenses of prosecution was issued by the Court upon the treasurer of a county and was delivered to the attorney for the prosecution. The attorney according to the practice received the money from the treasurer after getting the signatures of the persons named in the order. It was held that the signatures on the document merely had the effect of giving authority to the attorney to receive the money and was not a receipt.

10. Clause (a).—This clause applies only where any money or any bill of exchange, cheque or promissory note is acknowledged to have been received. It does not apply to movable property as cl. (b) does.

Under cls. (b) and (c) a document will not be a receipt unless the receipt is in satisfaction of a debt. Under this clause, however, it is not necessary that the receipt should be in satisfaction of a debt.

3. ('33) 20 AIR 1933 Oudh 51 (52) : 8 Luck 164 : 140 Ind Cas 192 (DB), *Emperor v. Mahipal Singh*.

Also see S. 65 Note 1.

4. ('04) 2 Low Bur Rul 307 (309) (FB), *Anonymous*.

('31) Beng S M Vol I p. 15. (Certificate of payment or certified copy of premium receipt is not receipt.)

('40) Bihar S M pp. 96-97. (Certificate of payment or certified copy of premium receipt is not receipt.)

5. ('79) 4 Cal 829 (830) : 3 Cal L Rep 597 (SB), *In the matter of Act XVIII of 1869*. (Case under Sch. II Art. 7 of Stamp Act, XVIII of 1869.)

5a. (1838) 174 E R 244 (245) : 2 M & Rob 147 (150), *Reg v. Boardman*.

6. ('99) 23 Bom 54 (56) (DB), *In re Jamnadas Harinanan*.

[But see (1820) 171 E R 747 (748) : 23 R R 751, *Catt v. Howard*. (Suit for recovery of money advanced by plaintiff to defendant for the purpose of purchasing a life annuity for plaintiff who sought to prove payment by adducing an unstamped receipt executed by one F on account of the defendant—Held it was inadmissible in evidence as being unstamped.)]

7. (1812) 168 E R 774 (774) : 1 R & R 227 (227) *Rex v. Harvey*.

S2 (23)—NOTE 9

1. (1847) 175 E R 244 (247) : 2 Car & Kir 586 (593).



The definition in the act of 187 I was not separated into paragraphs and therefore it was not clear whether the words "in satisfaction of a debt" applied also to cl. (a) or not. Still in the undermentioned case<sup>1</sup> it was held that the words "in satisfaction of a debt" related only to documents whereby any movable property other than money, bill of exchange, cheque or promissory note was acknowledged to have been received. This has now been made clear by giving the definition in separate clauses.

In Mulla and Pratt's *Stamp Act*, (4th Edn., 1941) p. 39, it is stated that the distinction is not important as under Art. 53, exemption (b), a receipt for money paid without consideration is exempt from duty. This is not correct. A payment may be for consideration though it is not in satisfaction of a debt. A debtor may give a "receipt" for the money borrowed by him. The money is clearly not received in satisfaction of any debt in such a case as the lender does not owe any money to the borrower.

The clause does not require that the money acknowledged to have been received must *actually* have been received. Thus, where a bill for goods supplied contains at the foot words 'received payment' and thereunder the signature of the shop-keeper, it will be a "receipt" and stampable as such, even though no actual payment has been made or even though the document has not been delivered to the person from whom the amount is alleged to be due.<sup>2</sup>

In the undermentioned case<sup>3</sup> a paper signed by the defendant was to the following effect: "Mr. H. (plaintiff) has advanced me £12 on furniture and, etc., delivered to him at Stratford." It was held that it was merely an acknowledgment that money had been advanced on a pledge of furniture and was not a "receipt". It is conceived that such a document would be a 'receipt' under this sub-section.

**11. "Money."**—Ordinarily the word 'money' should be construed in its strict sense as meaning cash and currency notes, unless it appears from the context that it has been used in a broader sense.<sup>1</sup> According to Stuart, C. J., in the undermentioned case<sup>2</sup> "money" means and includes not only coin, but also bank notes, Government promissory notes, bank deposits and otherwise generally any paper obligation or security that is immediately and certainly convertible into cash, so that nothing can interfere with or prevent such conversion.

According to the dictionary meaning it means coin and promissory documents representing it, especially Government and bank notes. The word money seems to have been used in cl. (a) in this restricted sense. This is also apparent from the words "or any bill of exchange, cheque or promissory notes" which follow it.

**12. Receipt whether must relate to satisfaction of debt.**—See Note 10.

S2 (23)—NOTE 10

1. ('85) 1885 Pun Re No. 85, p. 178 (178) (FB), *Reference under Stamp Act*, 1879, S. 46, [See also ('87) 10 Mad 85 (86) (FB), *Reference under Stamp Act* 1879, S. 46. (Receipt is not only confined to acknowledgment of payment made in satisfaction of demand or debt but covers other payments of money for consideration, e. g., payment of a club bill by a member.)]
2. (1900-'02) 1 Low Bur Rul 281 (282) (SB), *In the matter of a reference from the Financial Commissioners, Burma*. (Definition in Act

- of 1869 contrasted—9 All 210 and *Millen v. Dent*, (1847) 10 Q B 846, relied on.)
3. (1837) 173 ER 461 (461): 8 Car & P 204 (205), *Huxlay v. O'Connor*.

S2 (23)—NOTE 11

1. ('08) 30 All 455 (457): 5 All L Jour 519 (DB), *Cheda Lal v. Gobind Ram*. (1883) 25 Ch D 154 (157): 53 L J Ch 207: 49 L T 666 (667): 32 W R (Eng) 57, *In re Cadogan*; *Cadogan v. Palagi*.
2. ('81) 3 All 788 (793) (FB), *Reference under S. 46, Act I of 1879*. Also see Section 30 Note 9.



**13. Receipt given in respect of club bill, etc.**—A receipt given by the secretary or manager of a club to a member acknowledging payment of a sum of money exceeding twenty rupees is liable to stamp duty under Art. 53. The reason is that the liability of a member to pay the subscription of the club arises under a contract not prohibited by law and therefore the payment is one for consideration.<sup>1</sup>

**14. Money paid without consideration.**—See Notes on Art. 53.

**15. Receipt for counsel's fee.**—See Notes on Art. 53.

**16. Clause (b).**—This clause applies only when movable property other than money, bill of exchange, cheque or promissory note is acknowledged to have been received and hence, where the receipt is of money, bill of exchange, cheque or promissory note, it need not be in satisfaction of a debt in order to make the document acknowledging such receipt a "receipt" under this sub-section.<sup>1</sup> This clause does not apply where *immovable* property is acknowledged to have been received in satisfaction of a debt.<sup>2</sup>

In the undermentioned case<sup>3</sup> A sued B to recover money due on a bond. B pleaded that the bond had been paid in part in sugarcane juice and as evidence of the fact produced a document alleged to be signed by A acknowledging the receipt of sugarcane juice from time to time. There was nothing in the document to show that the sugarcane juice was received in part satisfaction of the bond. It was held that the document was merely a memorandum of sugarcane juice supplied and therefore need not be stamped as a receipt.

Fresh stamps received in lieu of spoiled or unused stamps can hardly be regarded as property received in satisfaction of a debt or demand and therefore no stamp is necessary for a receipt for such stamps.<sup>4</sup>

**17. Clause (c).**—This clause applies when any debt or demand or any part thereof is acknowledged to have been satisfied or discharged.

In a suit for recovery of debt for ironwork sold and delivered, the defendant pleaded payment and sought to put in evidence an unstamped document signed by the plaintiff in these words: "Memorandum. That any demand we may have against W (defendant) for ironwork, etc., is this day settled and discharged in consideration of services rendered by him to us. N. B.—Particulars of our account shall be delivered with a receipt stamp." It was held that the document was a receipt and was inadmissible in evidence for want of stamp.<sup>1</sup>

**18. Clause (d).**—No formal words are required to constitute a receipt. Any writing which signifies or imports an acknowledgment of receipt or satisfaction as mentioned in clauses (a), (b) and (c) will be enough.<sup>1</sup>

A memorandum of account in the hands of a debtor showed on one side sums of money advanced and on the opposite side sums repaid. The entries were made by

## NOTE 13

1. ('86) 10 Mad 85 (86) (FB), *Reference under Stamp Act*, S. 46.

Also see Art. 53 Note 4.

## NOTE 16

1. ('85) 1885 Pun Re No. 85, p. 178 (178) (FB), *Reference under Stamp Act 1879*, Section 46.

2. See ('32) 19 A I R 1932 Nag 172 (172, 173): 28 Nag L R 216: 140 Ind Cas 397, *Emperor v. Sukhdeo*. (S. 30 does not apply to a receipt in regard to immovable property.) Also see S. 30 Note 7 and S. 65 Note 1.

3. ('84) 6 All 253 (255): 1884 All W N 72 (DB), *Debi Prasad v. Rupu*.

4. ('31) Beng S M Vol I pages 32 & 89.

## S2 (23)—NOTE 17

1. (1850) 15 Q B 722 (724): 19 L J Q B 528: 15 L T (OS) 79: 117 E R 632, *Livingstone v. Whiting*.

## S2 (23)—NOTE 18

1. (1899) 2 Q B 158 (166): 68 L J Q B 788: 81 L T 115: 47 W R (Eng) 650, *Attorney-General v. Carlton Bank*.



the creditor. When the account was finally closed a sum of Rs. 50 was paid as the balance due and one receipt stamp was attached and signed by the creditor. It was held that *each* entry of money repaid by the debtor imported an acknowledgment of part payment of debt and was therefore a "receipt".<sup>2</sup>

See also the undermentioned case.<sup>3</sup> See also Notes 21, 25 and 26.

19. **Adjustment of debt.**—See Note 18.

20. **Receipt and acknowledgment of a debt.**—A borrows a sum of money from B. A may give B a "receipt" for such money. A may also sign an "acknowledgment" of his debt to B. In the former case, the acknowledgment is of the *receipt* of money. In the latter case, the acknowledgment is of the *debt* due by A. It will be seen that a debt need not originate in the payment of money by the creditor to the debtor. Still there may be an "acknowledgment of a debt" by the debtor. But in such a case, there cannot be a "receipt" by the debtor.

An unstamped "receipt" may be admitted in evidence under S. 35 (b) on payment of the penalty. But an acknowledgment of a debt which is not stamped as required by Art. 1 is not admissible in evidence even on payment of penalty.<sup>1</sup> (See S. 35, cl. (a).)

21. **Form of receipt.**—No particular form of words is necessary in order to constitute a document as a receipt.<sup>1</sup> Any writing which signifies or imports an acknowledgment of the nature specified in clauses (a), (b) and (c) of this sub-section will be a receipt. The use of words such as "settled" or "paid" may in the particular circumstances of a case amount to a receipt.<sup>2</sup>

In *Lucas v. Jones*<sup>3</sup> M who was indebted to J on a mortgage executed a document in favour of J who was occupying M's house as lessee. The document ran as follows: "J having written off the sum of £72 from his mortgage debt being five quarters rent of his house, I hereby discharge the same rent till 24-7-1841." It was held that the document was a receipt.

**Signature.**—The concluding words of the sub-section show that a document need not be *signed* with the name of any person in order to constitute a "receipt."

2. ('13) 35 All 290 (291): 20 Ind Cas 216 (DB), *Emperor v. Tulsi Ram*.

3. ('80) 4 Bom 590 (593) (DB), *Faki v. Khotu*. (A document ran as follows: "Your fields are entered in my name. Ever since they came into your possession, I have received from you the assessment due upon them. I have now no claim against you for any balance of assessment. You have, out of kindness, remitted the costs which were due to you under the decrees, which you obtained in respect of these fields. I will cause the aforesaid fields to be entered in your name. Nothing remains due by or to either of us in respect of the produce of these fields." Held that the document stamped as a receipt was intended to be a receipt or acquittance and nothing more and was admissible in evidence for the purpose of establishing satisfaction of all claims which the parties had upon one another.)

S2 (23)—NOTE 20

1. ('33) 20 AIR 1933 All 577 (578): 146 Ind Cas 882, *Bindesari Prasad v. Ram Tape-sha*.

Also see S. 35 Note 21 and Art. 1, Note 12.

NOTE 21

1. (1899) 2 Q B 158 (166): 68 L J Q B 788: 81 L T 115: 47 W R (Eng) 650, *Attorney-General v. Carlton Bank*. (1798) 170 E R 475 (475): 2 Esp 621 (622), *Spawforth v. Alexander*.

2. (1837) 173 E R 451 (452): 8 Car & P 180 (182), *Reg. v. Houseman*. (1798) 170 E R 475 (475): 2 Esp. 621 (622), *Spawforth v. Alexander*. (Payment of bill on demand—Person writing on it word 'settled' with his initials—Held it amounted to a receipt.)

Also see Note 30.

3. (1844) 5 Q B 949 (953): 13 L J Q B 208: 3 L T (OS) 101: 114 E R 1506.



But unless signed, a receipt will not be liable to stamp duty under S. 3.<sup>4</sup>

**22. Form of receipt—Instrument containing other matters.**—It has been held that a document containing an acknowledgment of money being received and an agreement is admissible in evidence as a receipt if it has a receipt stamp, without an agreement stamp.<sup>1</sup> It is submitted that a document cannot be split up like this for purposes of admissibility under S. 35. (See Notes on S. 35.)

**23. Extrinsic evidence to prove nature of instrument.**—See Note 12 on S. 3.

**24. Receipt containing several items.**—A 'receipt' may relate to a sum of money which is made up of several items and which are specified in the receipt. See also Notes 18 and 25.

**25. Entry in book.**—Where a creditor entered the amount received with his signature against the entry in the debtor's khata book where the debtor had recorded the payment of his debt it was held that the entry amounted to a receipt.<sup>1</sup>

An entry made by a creditor in the debtor's book (*samadastak*) which contains items of amounts borrowed and repaid and purporting to be a receipt for the total balance due is a receipt.<sup>2</sup>

In *Attorney-General v. Carlton Bank*<sup>3</sup> a solicitor employed by a bank to transact its legal business recovered sums of money due to the bank in the course of his business. As each sum was recovered he entered it in his own account book and then handed over the money to the cashier of the bank who wrote against the entry in the account book his initials and date of receipt of the amount, sometimes adding the word "received". It was held that the entries so initialled were receipts as they were intended as an acquittance of the solicitor in respect of the money so received.

An entry signed by the seller in an account book of the purchaser that certain ornaments have been sold for a certain price and that the purchase price has been received is a memorandum of sale of goods and also a receipt.<sup>4</sup>

**26. Statement of account.**—Where a statement of account contains acknowledgments made at successive times upon payments of money by the debtor, each of such acknowledgments should be stamped as a receipt.<sup>1</sup> Similarly, where a *sarkhat* consisting of items entered by the creditor from time to time of money advanced and repaid, is left in the possession of the debtor, each entry of money repaid imports an acknowledgment of part payment of debt and, therefore, should be stamped as a receipt if the amount exceeds Rupees 20.<sup>2</sup>

Where A entered in an account goods and cash furnished to B from time to time, each page of which was authenticated by B's acknowledgment in writing of the receipt of its contents, it was held that the document was a receipt.<sup>3</sup>

4. ('34) 21 AIR 1934 Rang 49 (50) : 12 Rang 174 : 148 Ind Cas 886 (SB), *Financial Commissioner, Burma v. Indo Burma Watch Company*. (AIR 1914 Low Bur 219 : 7 Low Bur Rul 77 (FB) followed.)

S2 (23)—NOTE 22

1. (1808) 170 E R 994 (995) : 1 Camp 387 (388) : *Grey v. Smith*.

S2 (23)—NOTE 25

1. ('85) 11 Cal 267 (270) (DB), *Queen Empress v. Juggernath*.

2. ('87) 1887 Bom P J 41 (SB), *Jhaver Joita v. Bonumya Rajemud*.

3. (1899) 2 Q B 158 (164, 165) : 68 L J Q B 788 : 81 L T 115 : 47 W R (Eng) 650.

4. ('34) 21 AIR 1934 All 201 (203) : 56 All 680 : 150 Ind Cas 672 (DB), *Raghubar Dayal v. Emperor*.

S2 (23)—NOTE 26

1. (1819) 106 E R 449 (449) : 2 B & Ald 501 (502), *Wright v. Shawcross*.

2. ('13) 35 All 290 (291) : 20 Ind Cas 216 (DB), *Emperor v. Tulshi Ram*.

3. (1801) 102 E R 178 (179) : 1 East 460 (463), *Jacob v. Lindsay*.



But a mere acknowledgment of the correctness of an account does not amount to a receipt.<sup>4</sup> In a suit by A against B to recover money received and not accounted for, B put in evidence a memorandum written, signed and dated by A to the following effect: "Balanced up to this day as per cash book." It was held that the document was merely a statement that the accounts between the parties were ascertained and balanced up to a particular date and was not a receipt.<sup>5</sup>

Memoranda attached to Railway Exchange Accounts, which are explanatory of entries made in those accounts, and on the strength of which credits are afforded to the Railway, are not receipts within the meaning of this section.<sup>6</sup>

27. **Sarkhat.**—See Note 26.

28. **Letter.**—A letter addressed to the debtor acknowledging the receipt of a sum of money above Rs. 20 from him in satisfaction of the balance of debt is a receipt and should be stamped as such.<sup>1</sup> Similarly a letter acknowledging the receipt of a cheque for Rs. 100 should be stamped as a receipt.<sup>2</sup> A letter written by one person to another stating that he had received payment of a debt from a third person is however not a receipt as it is not addressed to the person who has paid the debt.<sup>3</sup>

29. **Cash memo.**—In the case noted below,<sup>1</sup> a cash memo given to a customer for the purchase of goods and not containing the name of the customer was held not to be a "receipt" within this clause as it was not an instrument of acquittance and its delivery to the customer was not intended to provide him with evidence that he had paid for the goods to which it referred. In the undermentioned case<sup>2</sup> a Special Bench of the Lahore High Court has held that a cash memo given by the seller to the purchaser of goods is merely a document showing what the purchaser has to pay and is not meant nor does it signify or import, to be an acknowledgment of receipt of the payment of price. The words 'cash memo' merely indicate that the transaction mentioned in the document is not meant to be completed without payment in cash. Where however the seller has written the words "Received payment" the document would amount to a receipt and would be liable to be stamped as such even though it is not addressed to any particular customer and the name of the customer to whom it is given is not mentioned in the document.<sup>3</sup>

30. **Tradesman's bill.**—A bill on account of goods supplied containing at the foot printed words "received payment" and the signature of the person to whom the amount was due was held to be a receipt even though it was not delivered to the person from whom the amount was due and no actual payment was received thereunder.<sup>1</sup>

4. (1823) 130 ER 55 (57):1 LJ (O S) CP 18, *Wellard v. Moss*.

5. (1848) 136 ER 975 (977):10 LT (O S) 393:17 LJ CP 158, *Finney v. Tootell*.

6. ('40) Bihar S. M. p. 96.  
( '31) Beng SM Vol I p. 15.

#### S2 (23)—NOTE 28

1. ('84) 8 Mad 11 (13):1 Weir 330 (FB), *Reference under Stamp Act, Section 46*.

2. ('88) 11 Mad 329 (330):1 Weir 903 (DB), *Queen-Empress v. Muttirulandi*.

3. ('04) 2 Low Bur Rul 307 (309) (FB), *Civil Reference No. 5 of 1904*.

Also see Note 4.

#### S2 (23)—NOTE 29

1.\*('34) 21 AIR 1934 Rang 49 (50):12 Rang

174:148 Ind Cas 886 (SB), *Financial Commissioner v. Indo Burma Watch Co.*

\*('49) 36 AIR 1949 Lah 183 (185): Pak LR (1948) Lah 173 (SB), *In the matter of Stamp of Cash Memoranda etc.*

[But see ('34) Pun SM, part I-B, Ch. 3 para 17. (A cash memo is a 'receipt' under the Indian Stamp Act and if the amount exceeds Rs. 20 will require a one anna stamp.)]

('49) 36 AIR 1949 Lah 183 (185): Pak LR (1948) Lah 173 (SB). *In the matter of Stamp of Cash Memoranda, etc.*

#### S2 (23)—NOTE 30

1. ('02) 1 Low Bur Rul 281 (282) (SB), *In the matter of a reference from the Financial Commissioner*.



A received a bill of a tradesman named Sadler from his master B for the purpose of making payment. A returned the bill to B with the words "paid Sadler" written on it and it was taken by B to be an acquittance of the bill. In an indictment against A for forging a receipt the document was held to be a receipt.<sup>2</sup>

**31. Receipt for money drawn from Court.**—Stamped receipts must be taken where a person is allowed to withdraw from Court any sum exceeding Rs. 20.<sup>1</sup>

**32. Receipt coupled with promise to pay whether promissory note.**—See Note 10 on Section 2 (22).

**33. Stamp duty payable.**—See Notes on Art. 53.

**34. Time of stamping.**—See Notes on S. 17.

\*(24) "Settlement" means any non-testamentary disposition, in writing, of "Settlement." movable or immovable property made—

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him or

(c) for any religious or charitable purpose ;

and includes an agreement in writing to make such a disposition a[and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition] :

a. These words were added by S. 2 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904.)

#### Synopsis

- |                                  |   |
|----------------------------------|---|
| 1. Legislative changes.          | 6. Clause (b).  |
| 2. Settlement.                   | 7. Illustrative cases.                                  |
| 3. "Disposition."                | 8. Instrument recording terms of prior oral settlement. |
| 4. Non-testamentary disposition. | 9. Order of Court making settlement.                    |
| 5. Deed of dower.                |   |

**1. Legislative changes.**—Act XXXVI of 1860 and Act X of 1862 did not contain any definition of the term "settlement". But provision for payment of duty on settlement was made by Arts. 49 and 64 respectively of Sch. A to those Acts. In Art. 49 of Act XXXVI of 1860, settlement was described as follows :

"Marriage Settlements, etc., namely any Deed or Instrument whereby any sum or sums of money, or any Government Securities or other property, real or personal, shall be settled, or agreed to be settled, upon or for the benefit of any person or persons, in any manner whatsoever.

*Exemption.*—Wills, Testaments and the like, together with deeds merely declaratory of trust or appointment or apportionment or otherwise, in execution of powers or pursuant to any previous Settlement, Deed, or Will."

\*[1879—S. 3 (19) ; 1869—S. 3 (32).]

2. (1837) 173 E R 451 (452) : 8 Car & P 180 (182), *Reg. v. Houseman*.  
Also see Note 21.

S2 (24)—NOTE 31  
1. See ('65) 4 Suth W R Civ Cir 1 (1) (H C Cir No. 22).



Article 64 of Act X of 1862 described "settlement" in the same words as in Art. 49 of the Act of 1860 except that the *exemption* was omitted.

A definition of "settlement" was introduced for the first time in Act XVIII of 1869, section 3 (32) of which provided as follows :

"Settlement" means any instrument (other than a will) whereby the destination of movable or immovable property is settled or agreed to be settled."

This definition was altered by Act I of 1879. The definition contained in S. 3 (19) of that Act was as follows :

" 'Settlement' means any non-testamentary disposition in writing of movable or immovable property, made—

- (a) in consideration of marriage,
- (b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or,
- (c) for any religious or charitable purpose.

It includes an agreement in writing to make such a disposition."

To clause (b) of this definition the words "or for the purpose of providing, for some person dependent on him" were added by the present Act, II of 1899.

Finally a provision in respect of oral settlements was made by S. 2 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904) by adding the words "and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition" at the end of the definition. (See Note 8.)

**2. Settlement.**—This sub-section defines what a "settlement" is for the purpose of this Act. Unless an instrument falls within this definition it cannot be treated as a "settlement" for purposes of stamp duty.—Section 3 of the Specific Relief Act gives a different definition of the term "settlement". This is not applicable for purposes of this Act. Unless the instrument is executed for any of the purposes specified in this sub-section, it will not be a "settlement."<sup>1</sup>

In determining whether a document is a settlement or not, regard must be had to the substance of the document. The mere fact that it is headed a "settlement" is not enough to make it a "settlement".<sup>2</sup>

The mere fact that a document includes an agreement by the beneficiary to act in a particular way in consideration of the instrument will not affect its character as a settlement if it otherwise amounts to a settlement.<sup>3</sup>

#### Section 2 (24)—NOTE 2

1. ('47) 34 AIR 1947 All 141 (141): ILR (1946) All 708: 229 Ind Cas 527 (FB), *Narendra Singh Ju Deo v. Board of Revenue*. Owner by deed transferring property to trustees—Trustees to manage same on owner's behalf during his life time and to make certain arrangement on his death—Deed not executed for distribution of property—Owner reserving power of revocation to himself—Deed held was trust and not settlement.)

('98) 21 Mad 422 (425) (DB), *Reference under Stamp Act, Section 46*, (Compromise of widow's suit for maintenance.)

('84) 7 Mad 349 (350) (FB), *Reference under Stamp Act, Section 46*. (Gift to sister and her son held not to be settlement as provision for them was not the object of the gift.)

2. ('36) 23 AIR 1936 Cal 556 (560): 63 Cal 1098: 167 I. C. 713 (DB), *Bhupati Nath v. Basanta Kumari*.

Also see Art. 33 Note 4.

3. ('37) 24 AIR 1937 Lah 684 (685): 171 Ind Cas 15, *Md. Rashid Ahmad v. Emperor*. (Mother transferring her rights in property to her two sons—Each of her sons undertaking to give her some annuity and grain by way of maintenance—The agreement was held to be settlement.)



3. “Disposition.”—In order that there may be a settlement under this sub-section, there must be a “disposition” of property. The term “disposition” may mean a “transfer” of property. But in this sub-section it does not mean merely a transfer of property. It connotes an *arrangement* of rights and interests in property rather than a mere conveyance or transfer of such property. Hence, a mere conveyance or gift of property though made for any of the purposes mentioned in the section will not be a settlement.<sup>1</sup> Thus, a simple dedication of property to an idol, though clearly one for religious purposes (cl. (c)) is only a gift and not a settlement.<sup>1a</sup>

In *Bhupati Nath Chakravarthy v. Basanta Kumari Devi*<sup>2</sup> it was observed by the Calcutta High Court as follows :

“The word ‘settlement’ as it is generally understood really refers to a disposition of successive interests in immovable property and is generally couched in the form of a trust and it is such a settlement which is in the nature of disposition of property movable or immovable either in consideration of marriage or for one or more of the objects specified, namely, religion, charity, or provision for family, dependents or others, that in our opinion is contemplated by cl. (24), (of S. 2 of the Stamp Act).”

In the undermentioned case,<sup>3</sup> a Full Bench of the Nagpur High Court also expressed the view that the idea of a *trust* underlies a settlement.

In both the above cases, the actual decision was that a gift of property to an idol is not a settlement. This view can be understood as said above, on the basis that there is no “disposition of property in the sense contemplated by the sub-section in such cases. But it does not seem to be necessary for the purposes of the definition that there must be the creation of a *trust* or of *successive* interests in property in order to constitute a settlement, although it may be usual to make settlements in the form of trusts.

Where a person leaves a will whereby he bequeaths to his executors a certain sum of money for establishing such charity as they think fit and the executors then join in the execution of a document of trust for certain charitable purposes in respect of the fund, they do not make any “disposition” of the money by the document, because such disposition has been already made by the testator. The document executed by the executors is only an “appointment” chargeable under Art. 7.<sup>4</sup>

An immediate and present “disposition” of property is necessary for a settlement. But the mere use of words in the future tense does not necessarily mean that there is no present disposition of property.<sup>5</sup>

#### S2 (24)—NOTE 3

1. See ('98) 21 Mad 422 (DB), *Reference under Stamp Act, Section 46*. (A document containing no absolute and unqualified disposition of property, but only a provision for the life of the donee with reversion to the settler or his heirs, is not a gift, but only a “settlement” within the meaning of the Stamp Act.

('84) 7 Mad 349 (350) (FB), *Reference under Stamp Act, Section 46*. (The definition of the term “settlement” in the Stamp Act suggests the creation of separate interests in favour of several persons who may have a legal or moral claim on the settler, or for whom he may desire to make a provision. Where therefore a person bestows on his sister and her son certain land, because of natural affection, the document is liable to

stamp duty as a gift and not as a settlement.)  
1a.†('36) 23 AIR 1936 Cal 556 (560) : 63 Cal 1098 : 167 I. C. 713 (DB), *Bhupati Nath v. Basanta Kumari*.

('44) 31 AIR 1944 Nag 33 (35) : I L R (1944) Nag 81 : 212 Ind Cas 312 (FB), *Chief Controlling Revenue Authority v. Sarjubai*.

2. ('36) 23 AIR 1936 Cal 556 (560) : 63 Cal 1098 : 167 Ind Cas 713 (DB).

3. ('44) 31 AIR 1944 Nag 33 (35) : I L R (1944) Nag 81 : 212 Ind Cas 312 (FB), *Chief Controlling Revenue Authority v. Mt. Sarjubai*.

4. ('12) 35 Bom 444 (447, 448) : 11 Ind Cas 982, *In re Abdulla Haji*.  
Also see Art. 7 Note 2.

5. ('10) 33 Mad 304 (307) : 7 Ind Cas 357 (DB), *Rajammal v. Authiammal*.  
(1891) 64 L T 48 (51) : 60 L J Ch 241, *Johnstone v. Mappin*. (Relied on in 33 Mad 304.)



**4. Non-testamentary disposition.**—In order to be a settlement, the disposition must be a *non-testamentary* one. In other words, a disposition by a will or codicil will not be a 'settlement' under this Act.

An instrument which is to come into effect immediately is not a will.<sup>1</sup> Thus, an instrument which was called a trust-deed and which vested the properties immediately in trustees was held to be a settlement.<sup>2</sup>

Where a document is intended to have immediate operation, the fact that the owner reserves to himself a life-interest in the properties or a right of management of the properties till his death will not make it a will.<sup>3</sup>

One of the tests as to the testamentary character of a document is whether it is revokable. If it is not revokable it is not a will.<sup>4</sup> But an express provision for revokability does not show that the document is a will. Such a provision suggests the contrary, as a will is revokable without any express provision.<sup>5</sup>

In the undermentioned case<sup>6</sup> it was contended that the circumstance of the settler providing that any future property he might acquire should be brought into the settlement and that all sums to become due from him during his life-time should be paid out of his property gave a testamentary character to the instrument. It was held that the introduction of such words would only show that the settler attempted to include what he could not and not that he intended to make a will.

The registration of a deed may show that it is not a will.<sup>7</sup>

**5. Deed of dower.**—A deed of dower is made chargeable with stamp duty as a settlement under Art. 58. But a deed of dower executed on the occasion of a marriage between Muhammadans is expressly exempted from duty under Art. 58.<sup>1</sup>

**6. Clause (b).**—The words "for the purpose of providing for some person dependent on him" did not occur in the Act of 1879 but were added in the Act of 1899.

#### S 2 (24)—NOTE 4

1. ('95) 20 Bom 210 (214) (FB), *Reference by the Collector and Superintendent of Stamps, Bombay.*

(1867) 1 Pro and Div 384 (386) : 36 L J P & M 93 : 17 L T 19, *In the goods of Robinson.*

2. ('95) 20 Bom 210 (214), *Reference by the Collector and Superintendent of Stamps, Bombay.*

3. ('10) 33 Mad 304 (307) : 7 Ind Cas 357 (DB), *Rajammal v. Authiammal.*

('95) 20 Bom 210 (214) (FB), *Reference by the Collector and Superintendent of Stamps, Bombay.* (1886) 18 Q B D 256 (266) : 56 L J Q B 241 : 55 L T 848 : 35 W R (Eng) 303, *Crossman v. Reg.*

4. ('10) 33 Mad 304 (307) : 7 Ind Cas 357 (DB), *Rajammal v. Authiammal.*

(1867) 1 P & D 384 (386) : 36 L J P & M 93 : 17 L T 19, *In the goods of Robinson.*

5. ('95) 20 Bom 210 (214) (FB), *Reference by the Collector and Superintendent of Stamps, Bombay.* (It was contended that the words 'As long as I am alive, I have authority to increase or decrease' gave the owner the right to revoke the instrument—*Held*, as pointed out by Jarman in his *Treatise on Wills*, the insertion of a clause of revocation so far from indicating an intention to make a will, gives quite a contrary colour to the transaction, as a will does not require an express power to render it revokable.)

6. ('95) 20 Bom 210 (214) (FB), *Reference by the Collector and Superintendent of Stamps, Bombay.*

7. ('10) 33 Mad 304 (307) : 7 Ind Cas 357 (DB), *Rajammal v. Authiammal.*

#### S2 (24)—NOTE 5

1. ('35) 22 A I R 1935 Lah 122 (123), *Mt. Miraj Begam v. Seth Ram Parshad and Sons.* (A kabin-nama pure and simple, does not require any stamp.)



Under the Act of 1879 it was held that the words "distributing...." suggested that a *separate* interest in favour of the beneficiaries must be created by the instrument in order to constitute a settlement and that a joint gift to two or more persons would not be a settlement.<sup>1</sup>

There was also room for doubt whether a disposition in favour of a *single* person would be covered by the clause. In the undermentioned case<sup>2</sup> it was held that such a disposition would be a settlement. But in the case noted below<sup>3</sup> it was held that a maintenance grant in favour of the grantor's brother in consideration of the latter relinquishing his claims on the family properties was not a settlement.

The present clause makes it clear that a provision for a single individual may be a settlement. It is also clear that the disposition need not confer *separate* interests on the beneficiaries, where there are more than one.

Under a deed an owner of property transferred it to certain trustees who were to manage it on his behalf during his life-time and were to make certain arrangements in the event of his death. There were certain directions about the manner in which the trustees were to dispose of the income of the property and about gifts which they were to make to his daughters in the event of their marriages. He also reserved to himself the right of revocation. It was held that the deed was a trust and not a settlement as it could not be regarded as one executed for the purpose of distribution of the owner's property.<sup>4</sup>

#### 7. Illustrative cases.—See the undermentioned cases.<sup>1</sup>

##### S 2 (24)—NOTE 6

1. ('84) 7 Mad 349 (350) (FB), *Reference from the Board of Revenue Under S. 46 of Stamp Act.*

2. ('87) 1887 Bom P J 243, *Bai Lakhi v. Amaldas.*

Also see Art.7 Note 2.

3. ('81) 7 Cal 21 (23) (DB), *In the matter of Maharajah of Durbungah.*

('47) 34 AIR 1947 All 141 (141): ILR (1946) All 708: 229 Ind Cas 527 (FB), *Narendra-Singh Ju. Deo v. Board of Revenue.*

##### S 2 24—NOTE 7

1. ('15) 2 AIR 1915 All 198 (199): 37 All 264: 28 Ind Cas 348 (FB), *In re Someshur Dutt.* (Two brothers T and S, to settle a dispute between them, executed two instruments—One was a deed of gift where by T conveyed all his property to S and by another executed on the same date S undertook to maintain T during his life. *Held*, the transaction between the parties may fairly be said to come within the word "settlement." The two instruments were intended by the parties to be employed in completing this one transaction.)

('37) 24 AIR 1937 Lah 684 (685): 171 Ind Cas 15, *Mahomed Rashid Ahmad v. Emperor.* (Mother and her two sons, in order to settle disputes between them, executed and re-

gistered an instrument recording that the mother transferred her rights in all her property to her two sons in equal shares, each of her sons undertaking to give her Rs. 30 monthly and 10 maunds of wheat annually by way of maintenance. There were some other conditions also to be fulfilled by the sons—The default clauses were not clearly expressed but it was admitted that the intention was that if the sons did not give their mother the cash and grain fixed for her maintenance, the transfer in their favour would be ineffectual—*Held*, the document was a settlement.)

('24) 2 Pat L R (Cr) 18 (20), *Mt. Lilabati v. Secy. of State.* (The document was in the following terms: "The executant announces that he holds the property and intends to hold it for his life; thereafter it will go to his son if one be born in which case the son will become the permanent proprietor, and, as against him the document, subject to a certain provision for maintenance will be void; if daughters be born and no son, the property will be distributed between the daughters and nieces. If daughters be not born an existing daughter and niece will become the permanent proprietresses." The question was whether the document was a "settlement" or a "declaration of trust" as contended. *Held*, that the document satisfied all the requirements of the definition of 'settlement' as given in the Act.)



**8. Instrument recording terms of prior oral settlement.**—The words as to oral settlements at the end of the sub-section were added by Act XV of 1904 to prevent the evasion of stamp duty by first making an oral disposition of the property and then recording the terms of the disposition.

An instrument declaring a trust for charitable purposes in regard to funds contributed by various persons was held in the undermentioned case<sup>1</sup> to be an instrument recording by way of a declaration of trust the terms of a prior oral disposition of the funds for charity and as such was covered by this sub-section.

Even where an oral settlement was made *before* Act XV of 1904, a subsequent document recording the terms of the disposition will be a "settlement" under this sub-section and liable to be stamped as such.<sup>2</sup>

**9. Order of Court making settlement.**—An order of Court making a settlement should bear a stamp as a settlement-deed.<sup>1</sup>

<sup>a</sup> [and

(25) "soldier" includes any person below the rank of non-commissioned "Soldiers." officer who is enrolled under the Indian Army Act, 1911.]

a. The word "and" and sub-section (25) were inserted by S. 2 and Sch. 1 of the Repealing and Amending Act, 1928 (XVIII of 1928).

'98) 21 Mad 422 (425) (DB), *Reference under Stamp Act, Section 46.* (Document was executed by two persons in favour of their sister making over to her, for her enjoyment for life without any power of alienation some land and at her death, the land was to revert to the executants or their heirs. *Held*, in this case there was a provision merely for the life of the donee with reversion to the settler and his heirs. The document was a settlement within the meaning of the Stamp Act.)

('82) 1882 Bom PJ 247, *In re Subedar Hussein-shakhan.* (The document in question was in the following words: "I have entrusted from beginning all my movable and immovable property to my son, and as I have become old, it is necessary that I should make in a document the disposal of my property with the object of preventing disputes hereafter about it. I, therefore, execute this document and direct that the village M, which has been granted to me in inam....be enjoyed hereditarily.....that my son has an independent right.....over the village and revenues thereof and nobody else has any right. And my son is the owner of my other movable and immovable property ....I put him in possession of the same from today.....I have given what I had to give to S's step-mother and sisters and others—S should maintain and protect them and my family members as I do." *Held*, the document was a "settlement.")

('33) 20 AIR 1933 Oudh 461 (461) : 146 Ind Cas 559, *Emperor v. Admad Zaman Khan.* (*Held* that a document which purported to be *waki alalaulad wal khandan* was a deed of settlement within the meaning of Section 2 (24).)

('33) Mad S. M. p. 157. (Citing, B. P. 49-R., Mis., 10th January 1911—Father by deed conveying his property to his daughter on account of natural affection and dutiful services rendered by her on condition that she should maintain her parents during their lifetime and that she should not encumber the property so long as the grantor lived—Father also agreeing not to encumber property in future—Deed held to be settlement and not a gift.)

('33) Mad S. M. p. 155. (Citing B. P. 16, 6th January 1880—A assigned to his daughter B certain land, a house, and some trees to be enjoyed by her during her lifetime. The question was whether this document was a settlement, a deed of gift, or an assignment. *Held*, that it was a settlement.)

#### S 2 (24)—NOTE 8

1. ('11) 35 Bom 444 (447, 448) : 11 Ind Cas 982, *In re Abdulla Haji Dawood Bowala Orphanage.*

2. ('05) 7 Bom LR 931 (933) (FB), *In re Mansukhram.*

#### S 2 (24)—NOTE 9

1. ('1880) 17 Ch D 778 (780) : 50 L J Ch 248, *In re Gowan.*



*A—Of the Liability of Instruments to Duty.*

\*3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say—

- (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in <sup>aa</sup>[the Provinces] on or after the first day of July, 1899 ;
- (b) every bill of exchange <sup>a</sup>[payable otherwise than on demand] <sup>b</sup>[\* \*] or promissory note drawn or made out of <sup>aa</sup>[the Provinces] on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in <sup>aa</sup>[the Provinces] ; and
- (c) every instrument (other than a bill of exchange, by [<sup>\*</sup> <sup>\*</sup>] or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of <sup>aa</sup>[the Provinces] on or after that day, relates to any property situate, or to any matter or thing done or to be done, in <sup>aa</sup>[the Provinces] and is received in <sup>aa</sup>[the Provinces] :

Provided that no duty shall be chargeable in respect of—

- (1) any instrument executed by, or on behalf of, or in favour of, the <sup>c</sup>[Crown] in cases where, but for this exemption, the <sup>c</sup>[Crown] would be liable to pay the duty chargeable in respect of such instrument ;
- (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act XIX of 1838, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts.

<sup>aa</sup>. substituted For “British India” by I. O.

a. These words were *inserted* by S. 5 of the Indian Finance Act, 1927 (V of 1927).

b. The word “cheque” was *omitted*, *ibid*.

c. *Substituted* for the word “Government” by A. O.

### Provincial Amendments.

#### BENGAL

(i) *After* clause (c) and *before* the Proviso in the main Act, *add* the following Proviso :

“Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in clauses (a), (b) or (c) of this section or in Schedule I, the amount indicated in Schedule IA to this Act shall, subject to the exemptions contained in that schedule, be the duty chargeable under this Act on the following instruments, mentioned in cls. (aa) and (bb) of this proviso, as the proper duty therefor respectively,—

\*[1879—S. 5 ; 1869—Ss. 4, 7, 8 ; 1862—Ss. 2, 9, 10 ; 1860—Ss. 2, 7, 8.]



(aa) every instrument, mentioned in Schedule IA as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed in Bengal on or after the first day of April, 1922 ; and

(bb) every instrument mentioned in Schedule IA as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed out of Bengal on or after the first day of April, 1922, and relates to any property situated, or to any matter or thing done or to be done in Bengal and is received in Bengal :—

(ii) After the word “Provided” in the Proviso of the main Act *add* the word “also.”—*Ben. Act III of 1922, S. 4. [1-4-1922]*

#### BIHAR

Substantially the same as that of Bengal, except the following : For the word “Bengal” wherever it occurs *substitute* the word “Bihar” and for the word and figures “April, 1922” wherever they occur *substitute* the word and figures “January, 1938.”  
—*Bihar Act VI of 1937, Ss. 4 and 5. [1-1-1938.]*

#### CENTRAL PROVINCES

Same as that of Bengal, except the following : For the word “Bengal” wherever it occurs *substitute* the words “the Central Provinces and Berar” and for the words and figures “the first day of April, 1922” wherever they occur *substitute* the words and figures “the commencement of the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939.”  
— *C. P. Act VI of 1939, S. 3.*

NOTE :—The Central Provinces and Berar Indian Stamp (Amendment) Act, 1939 came into force from the first of July, 1939. See Notification No. 712-471-VIII dated 22-6-1939 in C. P. Gazette dated 23-6-1939, Part I, page 504

#### MADRAS

Substantially the same as that of Bengal, except the following : For the words “clauses (a), (b) or (c)” *substitute* the words “clause (a) or (c)” and for the word “Bengal” where it occurs in the first two places *substitute* the words “the Presidency of Madras” and where it occurs in the last two places *substitute* the words “the said Presidency.”  
— *Madras Act VI of 1922, S. 4. [25-4-1922.]*

#### BANGANAPALLE

In section 3

(a) in clause (a), for the words and figures “the first day of July 1899” the words and figures “the 1st day of December 1948” shall be *substituted* ;

(b) in the first proviso, for the words and figures “on or after the first day of April 1922” in the two places where they occur, the words and figures “on or after the 1st day of December 1948” shall be *substituted*.

—*G. O. Ms. No. 2722, Rev., 16-11-1948 ; Fort St. Geo. Gaz., Part I—Extra, dated 16-11-1948.*

#### PUDUKKOTTAI

In Section 3

(a) in clause (a) for the words and figures “the first day of July 1899” the words and figures “the 12th day of August 1948” shall be *substituted*;



- (b) in the first proviso, for the words and figures "on or after the first day of April 1922" in the two places where they occur, the words and figures "on or after the 12th day of August 1948" shall be substituted.

—*G. O. Ms. No. 1872, Rev., 5-8-1948 : Fort St. Geo. Gaz., Part I—Extra., dated 6-8-1948.*

## ORISSA

Same as that of Bengal, except the following : For the words and figures "the first day of April 1922" wherever they occur *substitute* the words and figures "the date of commencement of the Orissa Stamp (Amendment) Act, 1943" and for the word "Bengal" where it occurs in the first two places *substitute* the words "the Province of Orissa" and where it occurs in the last two places *substitute* the words "the said Province."

—*Orissa Act VI of 1943, S. 4. [26-4-1943.]*

## PUNJAB

Substantially the same as that of Bengal, except the following : For the word "Bengal" wherever it occurs *substitute* the words "the Punjab" and for the words and figures "the first day of April, 1922" wherever they occur *substitute* the words "the date of the commencement of this Act."—*Punjab Act VIII of 1922, S. 5. [15-1-1923.]*

## UNITED PROVINCES

Substantially the same as that of Bengal, except the following : For the word "Bengal" wherever it occurs *substitute* the words "the United Provinces" and for the words and figures "on or after the first day of April, 1922," wherever they occur *substitute* the words and figures "on or after the date on which the United Provinces (Stamp Amendment) Act, 1948, comes into force."

—*U. P. Acts III of 1936, S. 3 [1-5-1936.] and XVII of 1948 S. 4 [1-4-1948].*

### Synopsis

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|---|---|
| 1. Legislative changes.   | 16. Document relating to property situated abroad.  |
| 2. Provincial Acts.   | 17. Foreign bills of exchange and promissory notes—Clause (b).  |
| 3. Scope of the section.  | 18. Other foreign instruments.—Clause (c).  |
| 4. Chargeability with duty—General.                                       | 19. Foreign contracts. See Note 21.   |
| 5. "Instrument."  | 20. Instruments executed outside the Provinces but affecting property in India—Clause (c). See Note 18. |
| 6. Document varying terms of previous document. See Note 3 on Section 14. | 21. Stamp-law of foreign countries.   |
| 7. Alteration of document. See Note 2 on S. 14.                           | 22. Instrument not duly stamped—Effect.   |
| 8. Wills.   | 23. Time for stamping documents. See Ss. 17, 18 and 19.   |
| 9. Instruments not liable to duty—Illustrative cases.                     | 24. What Act applicable.  |
| 10. Exemptions.   | 25. Government, liability of, to pay stamp duty—Proviso 1.  |
| 11. Exemption from stamp duty—Onus.                                       | 26. Proviso 2.  |
| 12. Determination of nature of instrument for purposes of stamp duty.     | 27. Surcharge.  |
| 13. "Executed in the Provinces"—Clause (a).                               |   |
| 14. "The Provinces." See Note 2 on S. 1.                                  |   |
| 15. Bill of exchange drawn on person outside the Provinces.               |   |



**1. Legislative changes.**—The sections in the earlier Acts corresponding to this section are as follows : Section 5 of Act I of 1879, Ss. 4, 7 and 8 of Act XVIII of 1869; Ss. 2, 9 and 10 of Act X of 1862 and Ss. 2, 7 and 8 of Act XXXVI of 1860.

The chief change in the different Acts that must be noted here is as to the chargeability of instruments executed abroad. The Stamp Acts XXXVI of 1860 and X of 1862 contained no provision for stamping documents executed out of British India, except bills of exchange. Act XVIII of 1869 for the first time added a provision that instruments executed out of British India but relating to any property within British India were liable to stamp duty.

This provision was extended in the Act of 1879 by the inclusion of documents executed abroad and relating to any matter or thing done or to be done in British India thus making the provision practically the same as under the present Act on this point.

The general exemption regarding an instrument executed by or on behalf of or in favour of the Government contained in Sch. II of Act I of 1879 has been inserted as Proviso (1) to S. 3 in the present Act. (See also Note 25.)

Proviso (2) was added for the first time in the present Act by the Select Committee so as to bring the Indian Law in this respect into conformity with the law of the United Kingdom.

*Subsequent amendments.*—In clause (b) of S. 3, the word “cheque” was omitted and in its place the words “payable otherwise than on demand” were inserted by S. 5 of the Indian Finance Act (V of 1927). The same Act omitted the word “cheque” from clause (c). These changes were consequent on the fact that under that Act cheques and bills of exchange payable on demand were relieved of stamp duty.

In proviso (1) to the section the word “Crown” was substituted for the word “Government” by the Government of India (Adaptation of Indian Laws) Order, 1937.

**2. Provincial Acts.**—The Bengal Stamp (Amendment) Act (III of 1922) inserted a proviso to S. 3 after clause (c). For the text of the proviso see under the heading “Provincial Amendments” above.

Several other Provinces followed suit and the proviso has now been repeated *mutatis mutandis* in Bihar, the Central Provinces and Berar, Madras, Orissa, the Punjab and the United Provinces.

**3. Scope of the section.**—Section 3 is the charging section under this Act,<sup>1</sup> and states what documents are liable to duty under the Act. The section relates itself to Sch. I and provides that the documents mentioned in the Schedule are chargeable with the duty specified therein in regard to each document. But this only applies to documents executed in the Provinces. Documents executed abroad are liable to duty only in certain specified cases. See clauses (b) and (c).

Besides, there are exemptions from duty in various cases provided for in the body of the Act or in schedule I.

Unless a document comes within the charging section it is not liable to duty.

As the section declares that instruments *mentioned* in Sch. I shall be chargeable with duty, it follows that documents *not mentioned* in that schedule are not liable to

Section 3—NOTE 3

1. ('34) 21 AIR 1934 Rang 49 (50) : 12 Rang 174 (178) : 148 Ind Cas 886 (SB), *Financial*

*Commissioner, Burma v. Indo Burma Watch Co.*



duty. The schedule gives a list of instruments liable to stamp duty and its provisions must be treated as exhaustive for the purpose.<sup>2</sup>

**4. Chargeability with duty—General.**—In determining whether a document comes within the language of the Stamp Act, the Court has to consider whether the document produced is one which fairly falls within the description of any one or more of the documents there mentioned. If it does, it may be liable to be stamped; otherwise it is not liable to be stamped.<sup>1</sup> Further, a document is not liable to stamp duty unless the conditions mentioned in the charging section as to when a document is liable to stamp duty are also satisfied.<sup>2</sup>

An instrument is to be stamped according to the true intent and meaning of the bargain which it represents. The goodness or badness of the executant's title in no way affects the question of the stamp duty.<sup>3</sup>

Under this section instruments become chargeable with stamp duty only when they are *executed*. Hence, an unsigned document is not liable to stamp duty as such a document cannot be said to be "executed."<sup>4</sup> See S. 2. (12).

Under S. 2 (6), the duty chargeable on an instrument must be decided with reference to the Act in force at the date of the execution of the document.<sup>5</sup> An instrument executed in British India is liable to duty although it may relate to property situated outside.

The subject of the schedule of the Stamp Act is the amount of duty to be charged on every instrument mentioned in it. The schedule of this Act, like the Customs schedule, should be treated with mathematical precision and the rule contained in S. 13 of the General Clauses Act that the singular includes the plural does not apply in interpreting the schedule.<sup>6</sup> A void instrument is not liable to stamp duty.<sup>7</sup>

**5. "Instrument."**—For definition of "instrument" see S. 2 (14).

Under this section, the liability to stamp duty arises only on the execution, i.e., the signing of an instrument.<sup>1</sup> But this does not mean that an unsigned document can never be an "instrument."<sup>2</sup> The signature is material only for the purpose of stamping.

2. ('16) 3 AIR 1916 Pat 250 (251): 1 Pat L Jour 366: 36 I. C. 175 (DB), *Mt. Sunder Koer v. Emperor*.

S 3—NOTE 4

1. ('80) 5 Cal 864 (865): 6 Cal L R 286 (DB), *Narain Coomary v. Ramkrishna Dass*.

2. ('34) 21 AIR 1934 Rang 49 (50): 12 Rang 174: 148 Ind Cas 886 (SB), *Financial Commissioner, Burma v. Indo Burma Watch Co.*

3. ('31) 18 AIR 1931 Cal 193 (194): 58 Cal 33: 127 I. C. 775 (FB), *Janardhan Rao v. Secy. of State*.

4. ('34) 21 AIR 1934 Rang 49 (50): 12 Rang 174: 148 Ind Cas 886 (SB), *Financial Commissioners, Burma v. Indo Burma Watch Co.*

('34) 21 AIR 1934 All 1052 (1052): 152 Ind Cas 41 (DB), *In re Sukhdeo Prasad*. (Unsigned receipt.)

('14) 1 AIR 1914 Low Bur 219 (220): 7 Low Bur Rul 77: 22 Ind Cas 75 (FB), *In re Chet Po*.

Also see S. 2 (12) Note 9.

5. ('82) 5 Mad 394 (396): 7 Ind Jur 16 (FB), *Reference under Stamp Act, S. 46*.

6. ('33) 20 AIR 1933 All 321 (327): 55 All 468 143 Ind Cas 486 (FB), *Ram Swarup v. Joti*.

7. See ('28) 15 AIR 1928 Pat 134 (137): 7 Pat 99: 105 Ind Cas 502 (DB), *Herbert Francis v. Md. Akbar*. (Mortgage-deed invalid for registration—Not liable to stamp duty.)

S 3—NOTE 5

1. ('21) 8 AIR 1921 Upp Bur 3 (4): 4 Upp Bur Rul 80: 66 Ind Cas 360, *Maung Din Po v. Maung Po Nyein*.

('34) 21 AIR 1934 All 1052 (1052): 152 Ind Cas 41 (DB), *In re Sukhdeo Prasad*.

2. ('14) 1 AIR 1914 Low Bur 219 (220): 7 Low Bur Rul 77: 22 Ind Cas 75 (FB), *In re Chet Po*.

Also see S. 2 (12) Note 9.



Under this section, the thing which is made liable to stamp duty is the *instrument* and not the *transaction* which it represents. Hence, if a contract can be or is carried out without an instrument no stamp duty need be paid.<sup>3</sup>

6. Document varying terms of previous document.—See Note 3 on Section 14.

7. Alteration of document.—See Note 2 on Section 14.

8. Wills.—Under the Bombay Regulation XVIII of 1827, S. 10, wills were liable to stamp duty.<sup>1</sup> But a will not being one of the documents mentioned in Sch. I, it is not liable to stamp duty under this Act.

9. Instruments not liable to duty—Illustrative cases.—An acknowledgment which is merely intended to acknowledge the correctness of an account is not an acknowledgment of *debt* mentioned in Art. 1 of the schedule and is not liable to stamp duty.<sup>1</sup>

When a *solenamah* refers to the subject of the claim, it becomes, when recorded, a proceeding of the Court and does not require stamp duty.<sup>2</sup>

A document authorising a *vakil* to apply for copies of records from the Collector's office falls under Art. 10, Sch. II of the Court-fees Act and not under Art. 50 of Sch. I of the Stamp Act of 1879 (now Art. 48). It does not, therefore, require to be stamped under the Stamp Act.<sup>3</sup>

A petition to the Court informing it of an agreement which the parties have entered into for the compromise of the suit and praying for the removal of the suit from the file, is a petition to the Court chargeable under the Court-fees Act and *not* under the Stamp Act.<sup>4</sup>

Document containing orders upon tenants to hold themselves responsible to a particular person to whom a release has been made by their landlord is not a document required to be stamped.<sup>5</sup>

8. (1889) 23 QBD 579 (589) : 61 L T 832 : 38 WR (Eng) 3, *Inland Revenue Commissioners v. Angus*.

(1900) 1 QB 310 (319), *Muller and Co.'s Margarine Ltd. v. Inland Revenue Commissioners*.

(1906) 2 KB 834 (841), *Maple and Co. (Paris) Ltd. v. Commissioners of Inland Revenue*.  
(1898) 1 QB 226 (232), *West London Syndicate v. Inland Revenue Commissioners*.

[See ('69) 11 Suth WR 151 (152) (DB), *Rajkoomar v. Ram Suhaye*. (Held, surrender of equity of redemption in the case did not require a stamped instrument and that such surrender could be effected by merely giving up the document creating the right of redemption.)]

#### S 3—NOTE 8

1. See ('89) 1889 Bom P J 292 (DB), *Harkor v. Manishankar*. (A will executed in 1843 with regard to property not at that time in British India does not require a stamp.)  
(('66) 2 Bom HCR 52 (60), *Webbe v. Lester*. (Regulation XVIII of 1827 does not require a will to be stamped during the testator's lifetime.)

#### S 3—NOTE 9

1. ('36) 23 AIR 1936 Mad 939 (939) : 166

Ind Cas 750, *Chinna Subbaroyulu v. Narasimha Reddi*.

('25) 12 AIR 1925 Mad 1215 (1216) : 91 Ind Cas 494 (DB), *Nagappa Chetty v. V. A. A. R. Firm*.

[See (15) 2 AIR 1915 Low Bur 140 (141) : 29 Ind Cas 943 (DB), *Ramdayal v. Kumar Gangadhar*.]

Also See Art 1 Note 7.

2. ('13) 19 Ind Cas 551 (552) (DB) (Cal), *Ambica Charan v. Srinath Dutta*.

3. ('86) 9 Mad 146 (148) (FB), *Reference under Stamp Act, Section 46*.

Also see S. 2 (21) Note 3.

4. ('85) 8 Mad 15 (17) (FB), *Reference under Stamp Act, Section 46*.

[See also ('08) 12 Cal WN 59 (60) (DB), *Pitambar Gain v. Uddhab Mondal*. (A petition of compromise merely containing a recital of a previous oral agreement for lease does not require a stamp as it is not an agreement in itself but is merely an evidence of an oral agreement.)]

Also see Preamble Note 41 and Art. 5 Note 12

5. ('76) 25 Suth WR 80 (80) (DB), *Bukshes Kunne v. Maharamee Thakoornath*.



A letter of reference was signed by both buyer and seller requesting the arbitrators to ascertain whether certain specific bales of goods, appropriated by the seller to the contract were inferior in quality to the goods deliverable under the contract and for issue of an award. It was held that the letter did not require a stamp.<sup>6</sup>

A *dowl fehrist* is merely a memorandum or record by the zamindar's agents of the rent which had been settled between the zamindar and the ryots and bearing the signatures of the ryots in testimony of their admitting the correctness of the *jumma* thereon recited as having been imposed upon them. The *dowl fehrist* is not in itself a contract and there is nothing in the Stamp Act to require it to be stamped.<sup>7</sup>

In a suit by a principal against an agent for recovery of a certain amount received by the agent, the agent produced a letter written by plaintiff's father to the effect that the agent was entitled to one-fourth part of it. It was held that the letter was neither a bond nor a *sharakutnamah* but was a simple letter and did not require to be stamped.<sup>8</sup>

A notice of allotment of shares in a company, though not stamped, is admissible in evidence to establish the fact that notice of allotment had been given.<sup>9</sup>

Transactions between two independent States or Governments are acts of State and are not governed by the Municipal law of either. Consequently, a receipt granted by the Diwan of Travancore on behalf of that State to the British Government is not governed by this Act and need not be stamped.<sup>10</sup>

**10. Exemptions.**—Exemptions from stamp duty have been provided by the Stamp Act and also by certain other statutes. The exemptions provided by the Stamp Act may arise under—

- (1) The schedule, e.g., a *kabin-namah* pure and simple. See Art. 58.<sup>1</sup>
- (2) Section 8 which provides for the exemption from stamp duty of bonds, debentures or other securities issued by Local authorities under the Local Authorities Loan Act, XI of 1879.
- (3) Section 9 which empowers the collecting Government by rule or order published in the Official Gazette to reduce or remit in the whole or any part of the duties with which any instrument is chargeable.
- (4) Section 3, proviso (1) which exempts from duty instruments executed by, or on behalf of, or in favour of the Crown.
- (5) Section 3, Proviso (2) which exempts instrument for sale, transfer or other disposition of ships registered under the Merchant Shipping Act, 1894, (57 & 58 Vict., C. 60), the Bombay Coasting Vessels Act, XIX of 1838, or the Indian Registration of Ships Act, X of 1841.

6. ('09) 36 Cal 736 (743): 3 Ind Cas 185, *Finlay Muir Co. v. Radhakissen Gopikissen*.

7. ('78) 3 Cal 322 (324): 2 Ind Jur 642 (DB), *Gungapersad v. Gogun Singh*.

('78) 1 Cal L Rep 328 (330) (DB), *Karticknath Panday v. Khakun Singh*.

8. ('75) 23 Suth W R 325 (326), *Situl Pershad v. Monohur Doss*.

9. (1900) 4 Cal W N 369 (374), *Mohun Lall*

*v. Sri Gungaji Cotton Mills Company*.

10. ('33) Mad S.M. p. 18. (Citing, B. Ps. 3528, 19th November 1883, approved in G.O. 349, Revenue, 19th April 1906 and 305, Mis., 13th March 1913.)

#### S 3—NOTE 10

1. ('35) 22 AIR 1935 Lah 122 (123), *Mt. Miraj Begum v. Ram Parshad*.

Also see Art. 58 Note 9.



The exemptions from stamp duty provided by other statutes are as follows :

- (1) Section 115 of the Presidency Towns Insolvency Act, 1909.
- (2) Section 51 of the Land Acquisition Act, 1894, exempting an award or agreement made under that Act from stamp duty.
- (3) Section 28 of the Co-operative Societies Act empowering the Central Government to remit stamp duty payable in respect of instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society.
- (4) Section 29 of the Reserve Bank of India Act, 1934, which exempts the Bank from payment of stamp duty in respect of the bank notes issued by it.

If an instrument coming under an exemption in one heading of the schedule is hit by the taxing clauses of another heading, the exemption can have no operation,<sup>2</sup> unless the exemption is of a general nature.

**11. Exemption from stamp duty—Onus.**—Where a document produced is one which *prima facie* falls within any of the taxing clauses of the Stamp Act and therefore requiring a stamp, the onus lies on the party pleading its non-liability to stamp duty to show that the matters contained in it are such as fall within the exceptions mentioned in the Stamp Act.<sup>1</sup>

**12. Determination of nature of instrument for purposes of stamp duty.**—Generally speaking, in order to determine the nature of the instrument for the purpose of stamp duty, the Court should have regard to the *substance* of the transaction rather than to its *form*.<sup>1</sup> In other words, the document has to be stamped according to its legal effect and intention,<sup>2</sup> gathered from the document taken as a whole.<sup>3</sup>

2. See (1909) 2 K B 604 (608) : 78 L J K B 1158 : 101 L T 51, *County of Durham Electrical Power Distribution Company v. Inland Revenue Commissioners*.

S 3—NOTE 11

1. (1843) 134 E R 560 (563) : 12 L J C P 147, *Chanter v. Dickinson*.  
Also see Art. 5 Note 17.

S 3—NOTE 12

1. (1879) 4 Ex D 270 (277) : 48 L J Ex 574 : 27 W R (Eng) 916, *Wale v. Commissioners of Inland Revenue*.  
(193) 16 Mad 85 (89) : 3 Mad L Jour 30 (34) (DB), *Subbaraya v. Vythilinga*.  
(1866) 2 Ex 46 (50) : 36 L J Ex 11 : 15 L T 282 : 15 W R (Eng) 258, *Christie v. Commissioners of Inland Revenue*.  
(1943) 30 AIR 1943 Oudh 169 (171) : 204 Ind Cas 363, *Mt. Hubraji v. Deputy Commissioner, Fyzabad*. (A deed styled as a relinquishment of her interest by a Hindu widow in favour of the next reversioners was found to be a conveyance and chargeable to stamp duty as such.)  
(1924) 11 AIR 1924 Cal 578 (581) : 51 Cal 185 : 81 Ind Cas 471 (DB), *Bank of Bengal v. William A. Lucas*.  
(1897) 2 Q B 423 (427) : 66 L J Q B 732 : 77 L T 270 : 46 W R (Eng) 1, *Coats v. Inland Revenue Commissioners*.

NOTE.—The *form* of a document may be material in certain cases, e.g. conditional bonds under Cl. (a) of S. 2 (5)—See S. 2 (5) Note 3.

Also see S. 2 (10) Notes 2, 3 and Art. 22 Note 1.

2. (1931) 18 AIR 1931 Cal 193 (194) : 58 Cal 33 : 127 Ind Cas 775 (FB), *Janardhan Rao v. Secretary of State*. (The goodness or badness of the vendor's title in no way affects the stamp duty.)

(1937) 24 AIR 1937 Nag 57 (58) : ILR (1937) Nag 432 : 166 Ind Cas 681, *In re Trimbak Madhao*.

Also see S. 2 (10) Note 3.

3. (1979) 4 Cal 885 (887) : 3 Cal L Rep 520 (DB), *Brojender Coomar v. Bromomayee Choudhrani*.

(1986) 12 Cal 383 (386) (SB), *In re Manglas Tea Estate*. ("In determining the proper amount of stamp duty chargeable upon a deed of conveyance one must look at the *substance* of the transaction as disclosed by the whole of the deed, and not merely to the language of the operative part or parts of the instrument. We must be guided by what we find to be the true nature of the transaction. In construing Stamp Act we are bound to call things by their right names.")

(1931) 18 AIR 1931 Cal 732 (733) : 134 Ind Cas 1269 (SB), *Verajmal Muljee v. Secretary of State*. (On taking the document as a whole held that the document amounted to a transfer by way of assurance or mortgage.)



Hence, the description of a document given therein by the parties is not conclusive as to its real nature although it is one of the factors to be considered.<sup>4</sup>

In *Limmer Asphalte Paving Co. v. Commissioners of Inland Revenue*<sup>5</sup> Martin B. states the rules as follows :

"In order to determine whether any, and if any what, stamp duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial, even although they may have believed that its effect and operation was to create a security mentioned in the Stamp Act, and they so declare. For instance, if a writing were headed by a recital that the parties had agreed to execute a promissory note thereafter written, yet if in truth the contract set forth was not a promissory note but an agreement of another character, the stamp duty would be not that of promissory note but of the agreement. The question, therefore, stamp or no stamp, and if stamp to what amount, is to be determined upon the real and true character and meaning of the writing."

Thus, in *In re Burma Shell Oil Storage and Distributing Company Ltd. of India*,<sup>6</sup> all through the document the parties thereto styled themselves as licensor and licensee and called the document an agreement by way of licence. The instrument was however held to be a lease and liable to stamp duty as such. See also the cases noted below<sup>7</sup> in which the document was held to be of a character different from that mentioned by the parties.

Similarly, the legal nature of a document must be determined by its contents and not by the value of the stamp duty paid for it<sup>8</sup>.

4. ('32) 19 AIR 1932 Mad 689 (690): 137 Ind Cas 458 (DB), *Appa v. Kachai Bayyan*.

('26) 13 AIR 1926 Bom 107 (108): 91 Ind Cas 330 (DB), *Aswath Narayan v. Chimabai Gopalrao*.

('33) 20 AIR 1933 All 735 (737): 55 All 874: 145 Ind Cas 674 (FB), *In re Burmah Shell Oil Storage and Distributing Co. Ltd. of India*.

('30) 17 AIR 1930 Oudh 300 (301): 5 Luck 721: 123 Ind Cas 53, *Gopal Sahu v. Nand Kumar*.

('32) 19 AIR 1932 Lah 118 (119): 13 Lah 270: 135 Ind Cas 193 (SB), *Labh Singh v. Mehr Singh*. (In this case the deed was held to be a deed recording adoption rather than a will.)

('31) 18 AIR 1931 All 302 (303): 131 Ind Cas 135 (DB), *Ratan Singh v. Purbhu Dayal*.

('66) 3 Bom HCR (A C) 94 (100) (DB), *M.G. Pendse v. R. S. Malse*. (In this case the deed in question was in reality a deed of mortgage though it was erroneously styled as a composition deed.)

[See (1881) 7 QBD 165 (171): 50 LJQB 517: 44 LT 378: 29 WR (Eng) 610, *British India Steam Navigation Co. v. Inland Revenue Commissioners*. (Instrument purporting to be debenture held to be debenture and not promissory note.)]

. (1872) 7 Ex 211 (214, 215): 41 LJ Ex 106: 26 LT 633: 20 WR (Eng) 610.

6. ('33) 20 AIR 1933 All 735 (737): 55 All

874: 145 Ind Cas 674 (FB).

Also see Art. 35 Note 7.

7. ('34) 21 AIR 1934 All 1052 (1053): 152 Ind Cas 41 (DB), *In re Sukhdeo Prasad*. (Deed styled as a receipt, held to be a memorandum of agreement.)

('81) 7 Cal 21 (23), *In the matter of Rajah of Durbhungah*. (By a deed of family arrangement, one brother conveyed a pargana and the sum of two and a half lacs of rupees to a younger brother, on condition that the latter should release certain family property on which he had claims. Held that the deed was neither a conveyance nor a settlement, nor an instrument of partition within the meaning of Act I of 1879.)

(1927) 2 KB 465 (474): 96 LJB 1006: 137 LT 817, *Midland Bank Limited v. Inland Revenue Commissioners*. (Instruments described as receipts were held to be bills of exchange.)

8. ('16) 3 AIR 1916 Mad 601 (602): 38 Mad 134: 18 Ind Cas 135 (FB), *Venkataramana Iyer v. Narasinga Rao*. (In this case the lower court had held that the power-of-attorney was only a special power-of-attorney. In taking this view the lower court was influenced by the fact that the power-of-attorney was executed on a stamp paper of the value of one rupee only. Held that the legal nature of a document must be determined by its contents and not by the value of the stamp duty paid for it.)



On the question whether extrinsic evidence can be admitted in determining the nature of the instruments there is a conflict of opinions as far as the English decisions are concerned. Some have held that such evidence is admissible<sup>9</sup> while others have refused to consider it.<sup>10</sup> As regards the Indian decisions, it has been held by several High Courts that the stamp duty payable upon an instrument must be determined by referring to the terms of the document and the Court is not entitled to take into consideration evidence *dehors* the instrument.<sup>11</sup>

- 9, (1837) 112 ER 414 (417): 6 LJKB 209, *Field v. Woods*. (Evidence as to the post-dating of cheque.)
- (1878) 3 QBD 170 (173): 47 LJQB 147: 37 LT 633: 26 WR (Eng) 112, *Clarke v. Roche*. (Bill was shown by extrinsic evidence to be ante-dated.)
- (1843) 152 ER 895 (896): 12 LJ Ex 287: 1 LT (OS) 149, *Bartlett v. Smith*. (Evidence was held admissible to prove that what purported to be a foreign bill was in fact an inland bill.)
- (1888) 21 QBD 352 (355): 57 LJQB 630: 36 WR (Eng) 833, *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*. (*Obiter*.)
- (1848) 2 Ex 290 (296): 17 LJ Ex 231: 154 ER 502, *Duke v. Andrews*. (A, by a letter, requested the Committee of a Railway Company to allot him a certain number of shares in the undertaking, and thereby undertook to receive the same, or any less number, and to pay the deposit and execute the parliamentary contract and agreement when required. In answer he received from the company a letter of allotment headed 'not transferable.' Held that as the allotment was qualified, and the proposal and acceptance not being *ad idem* there was no binding contract between the parties.)
- (1848) 3 Ex 211 (214, 215): 18 LJ Ex 82: 13 LT (OS) 141: 154 ER 819, *Willey v. Parrat*.
- (1847) 1 Ex 20 (25): 16 LJ Ex 173: 9 LT (OS) 177: 154 ER 9, *Vollans v. Fletcher*.
- (1849) 4 Ex 681 (689): 19 LJ Ex 15: 14 LT (OS) 224: 80 RR 738, *Moore v. Garwood*.
- (1854) 2 WR (Eng) 228 (229): 23 LJMC 29, *Reg v. Overton*. (Held that the entry was a receipt as explained by the evidence and required a stamp. *R. v. William Hunter* (1794) 168 ER 415: 2 Leach 624 clearly shows that a document containing signature without more, may by apt and proper averments, be made to signify a receipt. The course of business in this case shows that in the act of receiving the money the party was required to put his name on the paper and evidence was received aliunde which shows it to have been a receipt.)
10. (1865) 122 ER 1348 (1351): 34 LJQB 217: 12 LT 452: 13 WR (Eng) 773, *Austin v. Bunyard*.
- (1833) 110 ER 703 (705): 2 LJKB 156, *Williams v. Jarrett*.
- (1894) 2 QB 715 (719): 64 LJQB 99: 71 LT 168: 43 WR (Eng) 22, *Royal Bank of Scotland v. Tottenham*.
- (1877) 2 Ex D 265 (267): 46 LJ Ex 605: 36 LT 182: 25 WR (Eng) 305, *Gatty v. Fry*.
11. ('35) 22 AIR 1935 Rang 243 (244): 13 Rang 613: 157 I.C. 538 (SB), *In re C.R.M., M.L.A. Chettyar Firm*.
- ('70) 5 Beng LR 103 (105): 14 Suth WR 38 (DB), *Chandra Kant v. Kartik Charan*.
- ('89) 16 Cal 432 (435) (DB), *Raman Chetty v. Mahomed Ghose*.
- ('17) 4 AIR 1917 Pat 521 (522): 2 Pat L Jour 686: 41 I.C. 693 (SB), *Mahomed Sadik v. Amiyath Dutt*. (Document stamped with one anna stamp containing the following at the bottom: 'W. by Chintaman Jena'—Contention that this meant attestation and document amounted to a bond—Held, to determine character of document no other evidence could be referred to—That 'w. by' meant 'written by' only—That document was a pronote and as such properly stamped.)
- ('26) 13 AIR 1926 Mad 1038 (1039): 49 Mad 903: 97 I.C. 993 (FB), *Board of Revenue, Madras v. Moopanna Samarazu*.
- ('01) 24 Mad 259 (261) (DB), *Surij Mull v. Hudson*.
- †('25) 12 AIR 1925 Bom 527 (528): 90 Ind Cas 685 (DB), *Ramprasad Shival v. Shrinivas Balmukund*.
- ('04) 6 Bom LR 699 (703), *Motilal v. Jagmohandas*.
- ('85) 1885 Pun Re No. 85, p. 178 (180) (FB), *Reference under Stamp Act, S. 46*.
- (1897) 21 Mad 49 (50) (DB), *Tirupathi Goundan v. Rama Reddi*. (The construction depends on the actual words used rather than what their effect may be as regards the rights of the parties.)
- [See also ('97) 20 Mad 27 (29) (FB), *Reference under Stamp Act, Section 46*. (Under Sch. I, Art. 21 of the Stamp Act (I of 1879) (Sch. I Art. 23 of the present Act) the amount of stamp duty payable on a conveyance is properly calculated on the consideration set forth therein and not on the intrinsic value of the property conveyed.)]
- Also see S. 27 Note 2; S. 35 Note 3.
- [But see ('23) 10 AIR 1923 Bom 237 (239): 47 Bom 321: 73 Ind Cas 718, *Superintendent of Stamps v. Chimanlal Lalbhai*. (Certain instruments were in form transfers of shares signed by one of the brothers in favour of each of the remaining brothers respectively. The Court took into consideration the facts of the case and treated these instruments in substance as instruments of partition.)]



In determining the question whether a particular instrument is sufficiently stamped, the Court should only look at the instrument as it stands. A defect, if any, in the Stamp Act cannot be cured by construing a document to be other than what it is or purports to be.<sup>12</sup>

Another well established rule as regards stamp duty is that an instrument should be stamped for its leading and principal object and this stamp covers everything accessory to this object.<sup>13</sup>

Similarly, in estimating the stamp duty payable on an instrument one must look to the primary contract and not take into account the stipulation which it may contain for payment of any damages in case of default, as such a stipulation is by way of penalty in case of breach of the original covenant.<sup>14</sup>

Where a question of penalty is involved in the matter of stamping an instrument and the instrument is capable of two alternative constructions, the one more favourable to the executant must be preferred.<sup>15</sup>

On the same principle, of the two possible constructions of an instrument, the one that brings it within an exemption from the stamp duty should be favoured. In *Warrington v. Furber*<sup>16</sup> Lord Ellenborough, C. J. observed :

"I think that where the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out ; and we should give a liberal construction to words of exception, confining the operation of the duty."

The principle was followed in the undermentioned cases.<sup>17</sup> The principle was however not followed in *In re Nirabai*,<sup>18</sup> wherein it was held that an exemption must be strictly construed in favour of the State.

If a document operates as a conveyance *in praesenti* and is not a mere record of a completed transaction in past, the fact that the words used in the document are in the past tense does not make any difference.<sup>19</sup>

For the purpose of levying stamp duty on a bond or security, it is the amount itself which is actually due at the time of taking the bond or security and not its interest or accretions that forms the basis.<sup>20</sup> (See S. 23.)

12. ('03) 27 Bom 279 (280) : 5 Bom L R 28 (SB), *Sakharam v. Ramchandra*. (Hundis—Local practice of drawing hundis in particular form in order to avoid paying higher duty—Court refused to admit evidence as to this.)

13. (1872) 7 Ex 211 (217) : 41 L J Ex 106 : 26 L T 623 : 20 W R (Eng) 610, *Limmer Asphalt Paving Co. v. Commissioners of Inland Revenue*.

14. ('65) 3 Suth W R (SCC) 14 (14) (DB), *J. W. Smith v. Gopal Sheikh*.

(27) 14 AIR 1927 Nag 72 (74) : 98 Ind Cas 631, *Collector of Nimar v. Lakhmichandsa*.

(66) 5 Suth W R (SCC) 10 (13) (DB), *John Dayle v. Mundaree Mundul*.

Also see S. 2 (5) Note 18, S. 26 Note 7 and S. 27 Note 6.

15. ('17) 4 AIR 1917 Pat 521 (222) : 2 Pat L Jour 686 : 41 Ind Cas 693 (SB), *Mahomed Sadik v. Amiyannath Dutt*. (Reference at the foot of a document 'W. by Chintaman Jena' interpreted both as "written by" and "witnessed by"—The former interpretation accepted in preference to the latter as other-

wise the document would have been a bond and liable to pay more stamp.)

16. (1807) 103 E R 334 (335) : 8 East 242 (245) : 6 Esp 89.

17. ('82) 1882 Bom P J 195 (SB), *Purushotamdas Kasidas v. Bhagvan Nathu*. (Schedule I Art. 5, Exemption (a).)

(88) 1888 Bom P J 227 (SB), *Mallava v. Hakamaji*. (Do.)

(92) 15 Mad 150 (152) (DB), *Kyd v. Mahomed*. (Do.)

18. ('05) 29 Bom 203 (207) : 6 Bom L R 844 (SB).

19. †(1899) 81 L T 633 (637) : 48 W R (Eng) 303, *Garnett v. Inland Revenue Commissioners*.

\*(1848) 2 Ex 778 (781) : 17 L J Ex 266 : 11 L T (OS) 271 : 154 E R 705 : 76 R R 782, *Horsfall v. Hey*.

(1933) 102 L J K B 696 (701) : (1933) 2 K B 126 : 149 L T 252, *Cohen and Moore v. Inland Revenue Commissioners*.

20. ('76) 1 Mad 378 (380) : 2 Ind Jur 168 (DB), *Narasaya Chetty v. Guruvappa Chetti*.



13. “Executed in the Provinces”—Clause (a).—Under this section, except in cases coming under clause (b) or (c), an instrument executed out of the Provinces is not liable to stamp duty.<sup>1</sup>

But a document mentioned in Sch. I and executed in the Provinces is liable to stamp duty under this Act even though it may relate to property situate out of the Provinces, or to anything to be done out of the Provinces. Thus, where a deed transferring goldmining rights in a block of land in Kolar (Mysore) with machinery, plant, buildings and stores thereon was executed in the Provinces, it was held that the document fell under cl. (a) of S. 3 as it was executed in the Provinces and as such liable to Indian stamp duty.<sup>2</sup>

It may also be noted here that the definition of “property” contained in the Stamp Act, 1869, which confined the term to property “being in British India” has been omitted in the later Acts.

The English law in this respect is different. Under S. 59 (1) of the English Stamp Act, 1891, a contract or agreement made in England for sale of lands or property locally situate out of the United Kingdom is not chargeable with stamp duty. Hence the undermentioned decisions<sup>3</sup> under S. 59 (1) of the English Stamp Act, 1891, are of little value in deciding cases arising under this section.

A deed of settlement partially executed in British India was held to come under S. 5 (a) of the Stamp Act of 1879 (now S. 3 (a)) and liable to Indian stamp duty even though it was intended to have effect in England and to be partially executed there, and though liable to English stamp duty.<sup>4</sup>

Similarly where an agreement was first executed in England by D and E and by A, the senior partner in the firm, and stamped with the stamp required by the English law for an agreement executed in England, but was subsequently executed in India by B and C, the other two partners, it was held that the agreement was liable to Indian stamp duty.<sup>5</sup>

Under S. 2 (12) “executed” and “execution” used with reference to instruments, mean “signed” and “signature.” Hence “executed in the Provinces” means *signed* in the Provinces.

14. “The Provinces.”—See Note 2 on S. 1.

15. **Bill of exchange drawn on person outside the Provinces.**—Under the Stamp Act the question whether a bill of exchange is a foreign instrument or an inland instrument is determined by reference to the *place* where it was *executed*. Thus, a

#### S 3—NOTE 13

1. ('28) 15 AIR 1928 Pat 134 (137): 7 Pat 99:105 I. C. 502 (DB), *Herbert Francis v. Mahomed Akbar*.

2. ('33) Mad S M p. 17. (Citing, B Ps 647, 11th April 1881, 690, 23rd April 1881.)

3. (1901) 70 L J K B 211 (218): 84 L T 101: (1901) 1 K B 245, *Danubian Sugar Factory v. Inland Revenue Commissioners*.

(1901) 1901 App Cas 217 (228): 70 L J K B 677: 84 L T 729: 49 W R (Eng) 603, *Inland Revenue Commissioners v. Muller & Co.'s Margarine Ltd.*

(1900) 1 Q B 310 (319), *Muller and Co.'s Mar-*

*garine Ltd. v. Inland Revenue Commissioners*. (Affirmed in 1901 App Cas 217.)

(1897) 1 Q B 175 (181): 66 L J Q B 137: 75 L T 534: 45 W R (Eng) 203, *Smelting Company of Australia v. Inland Revenue Commissioners*.

(1914) 2 K B 404 (410), *Velazquez Ltd. v. Inland Revenue Commissioners*. (Affirmed in (1914) 3 K B 458: 83 L J K B 1108.)

(1913) 29 T L R 476 (476), *Urban v. Commissioners of Inland Revenue*.

4. ('83) 1883 Bom P J 364, *Civil Reference 54 of 1883*.

5. ('76) 1 Mad 134 (141), *Oakes v. Jackson*.



bill of exchange drawn out of the Provinces is a foreign bill of exchange though it is paid or otherwise negotiated in the Provinces. Similarly a bill of exchange drawn in the Provinces is, so far as the Stamp Act is concerned, an inland instrument though it is made payable abroad. Such a bill is chargeable with Indian Stamp duty as under S. 17 of the Stamp Act all instruments chargeable with duty and executed in the Provinces shall be stamped before or at the time of execution. Thus, where a hundi is drawn in the Provinces upon a person resident at Colombo, the hundi, for the purposes of the Stamp Act, is an inland instrument and is liable to Indian stamp duty.<sup>1</sup>

16. Document relating to property situated abroad.—As seen in Note 13, an instrument *executed* in the Provinces is liable to duty under this Act although it relates to property outside the Provinces.<sup>1</sup>

17. Foreign bills of exchange and promissory notes—Clause (b).—According to cl. (b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of the Provinces and accepted or paid, or presented for acceptance or payment, endorsed, transferred or otherwise negotiated, in the Provinces shall be liable to stamp duty. Section 19 provides that the first holder in the Provinces of such instruments shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in the Provinces, affix thereto the proper stamp and cancel the same. It, therefore, follows that the liability of foreign bills of exchange and promissory notes arises *only* when the first holder does any of the acts mentioned in the section. So long as he has not done any of these acts or, in other words, so long as such instruments are not *acted upon*, he is not liable to stamp duty in respect of such instruments.<sup>1</sup>

According to S. 14 of the Negotiable Instruments Act, 1881, a bill of exchange or promissory note is said to be “negotiated” when it is transferred to any person so as to constitute that person the holder thereof. Under S. 15 of the same Act when the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to “indorse” the same.

A filing of a suit on a promissory note does not come under any of the acts mentioned in S. 3 (b) and S. 19,<sup>2</sup> and hence a promissory note drawn out of the Provinces can be sued upon in the provinces without affixing any Indian stamp on the document. It will be sufficient if Indian stamp is affixed before the decree is passed.<sup>3</sup>

18. Other foreign instruments—Clause (c).—Clause (c) provides that every instrument (other than a bill of exchange or promissory notes executed out of the

#### S 3 —NOTE 15

1. ('82) 5 Mad 220 (221) (DB), *Ramasami Chetty v. Ramasami Chetty*.

#### S 3 —NOTE 16

1. ('33) Mad S M p. 17. (Citing, B Ps 647, 11th April 1881, 690, 23rd April 1881.)

#### S 3 —NOTE 17

1. ('16) 3 AIR 1916 Sind 66 (69) : 9 Sind L R 150 : 32 Ind Cas 582 (DB), *Ram Singh v. Peru Mal.* (A pronote executed outside British India is admissible in evidence, even unstamped.)

(1868) 3 Q B 753 (760, 761) : 37 L J Q B 280 : 18 L T 881 : 17 W R (Eng) 8, *Griffin v. Weatherby*.

Also see S. 19 Note 3.

2. ('19) 6 AIR 1919 Mad 104 (104) : 52 Ind Cas 477, *Kunhi Koya v. P. V. Assan Bava*. Also see S. 19 Note 3.

3. ('98) 8 Mad L Jour 182 (183), *Simulu Ebrahim v. Abdul Rahiman*.

('99) 22 Mad 337 (338) : 9 Mad L Jour 135 (DB), *Mahomed Rowthan v. Mahomed Husin*.

('35) 22 AIR 1935 Sind 48 (49) : 28 Sind L R 266 : 153 Ind Cas 635, *Gangaram Shewaram v. Mallik Nur Ahmed*.

Also see S. 19 Note 3.



Provinces is liable to Indian Stamp duty if it relates to any property situate, or to any matter or thing done or to be done, in the Provinces and is received in the Provinces.

The Stamp Acts of 1860 and 1862 contained no provision for stamping documents executed out of British India,<sup>1</sup> except bills of exchange. Section 24 of the Act of 1869 for the first time provided that every document executed out of British India and relating to property situated in India would be liable to Indian stamp duty. The words "or to any matter or thing done or to be done" were first added by the Act of 1879. The English Stamp Act, 1891, S. 14 (4) also contains the words "to any property situate, or to any matter or thing done or to be done in United Kingdom."

An instrument executed out of the Provinces and not relating to any property situate or to any matter or thing done or to be done in the Provinces is not liable to Indian stamp duty.<sup>2</sup>

The words "situate in the Provinces" mean situate in the Provinces *at the time of making the instrument*. Consequently, if a mortgage were made of property which at the time of the execution of the deed was in England, that mortgage would not be subject to Indian stamp duty although subsequently and before it took effect, the property might be conveyed into British India.<sup>3</sup>

Similarly, a letter by which a chose in action (debt) was equitably assigned would not require a stamp where the chose in action was not in the Provinces at the time of assignment.<sup>4</sup>

The following are the instances of instruments executed abroad but liable to duty in British India.

Agreement executed at Trivandrum dividing properties situated both in British India and Travancore territories.<sup>5</sup>

Receipts signed within Mysore territory for interest due on Madras Municipal debentures.<sup>6</sup>

Vouchers executed in Mysore for work done in British India.<sup>7</sup>

#### S 3—NOTE 18

1. ('91) 14 Mad 255 (258) (FB), *Reference under Stamp Act, S. 46*. (Case under Act of 1862 relating to assignment and power-of-attorney executed in Australia and then received in Madras.)

2. ('18) 48 Ind Cas 187 (187) (Rang), *In re Mawchi Mines Ltd.* (This was a reference by the Collector of Rangoon as to whether two documents, a deed of assignment and a deed of mortgage of certain property situated in the Karenni State of Bawlake, executed in England were liable to be charged with duty—*Held*, that the instruments were not executed in British India and did not relate to any property situate or to any matter or thing done or to be done in British India. The documents were therefore not chargeable with stamp duty under Stamp Act, 1899.)

('70) 7 Bom HCR (AC) 140 (141) (DB), *Narayan Sadashiv v. Bapuji Balal*. (An instrument executed in a foreign country, which is valid by the law of that country

and does not affect any property within British India, can be admitted in evidence in British India without a British stamp.) [See (1872) 20 WR (Eng) 348 (350): 26 LT 381, *Gilchrist v. Herbert*. (This was a suit in England on an agreement made between two persons residing in Calcutta relating to property in Calcutta—*Held* that the document did not require a stamp under the English Stamp Act.)]

3. See ('77) 2 Cal 58 (87): 1 Ind Jur 337 (DB), *Moran v. Mittu Bibee*.

Also see S. 2 (10) Note 5, S. 2 (17) Note 1 and Art. 41 Note 2.

4. See ('71) 8 Bom HCR (OC) 169 (180), *Megji Hansraj v. Ramji Jotia*.

5. ('20) 7 AIR 1920 Mad 149 (149): 55 Ind Cas 965 (DB), *Rajangam Aiyer v. Rajamangam*.

6. ('33) Mad SM p. 17. (Citing, B. P. 361, 6th July 1892.)

7. ('33) Mad S M P. 17. (Citing, B. P. 216, 20th April 1892.)



Instrument of marriage settlement executed in foreign territory relating to property both in Mysore and in British India. Stamp duty should be calculated on the value of the *whole* property settled.<sup>8</sup>

Assignment by a Civil Court in Ceylon of the purchase of a mortgage-deed relating to immovable property in Madras.<sup>9</sup>

Notarial acts verifying the execution of a power-of-attorney executed out of British India are not liable to stamp duty as they do not relate to "any property situate or to any matter or thing done or to be done in British India" though the power-of-attorney relates to such things and as such is liable to duty.<sup>10</sup>

By a deed of apportionment executed in France, property in France was transferred by one English Company to another English Company, the consideration for the transfer being shares in the latter company which were to be issued and delivered to the former company, in England. It was held that the instrument *related to something to be done in England* and therefore liable to English stamp duty.<sup>11</sup>

One A borrowed a sum from F in England and a deed was executed in England mortgaging A's property in India. The deed was not, however, registered as a mortgage-deed and F in his suit for money stated that he did not rely on the deed as a mortgage but as a simple bond. It was held that S. 3 (c) did not apply because though the deed in question related to property in British India, the plaintiff did not rely on that part of the document and that provision in the deed must be disregarded by the Court for the reason that that was an unregistered deed and consequently invalid to the extent that it referred to immovable property.<sup>12</sup>

Under a finance agreement between the Nilgiri Railway Company and the Union Debenture Company, the latter Company undertook, on certain debenture bonds being made over to it, to advance the amount thereof and to secure the advance by providing that a mortgage-deed should be executed vesting the property of the Railway Company in three trustees. It was held that the instrument was liable to stamp duty as it referred to matters to be done in British India within the meaning of this clause.<sup>13</sup>

19. Foreign contracts.—See Note 21.

20. Instruments executed outside the Provinces but affecting property in India—Clause (c).—See Note 18.

21. Stamp law of foreign countries.—It is a settled principle of international law that no country takes notice of the revenue laws of another country.<sup>1</sup> Thus, it is not necessary for the courts in British India to consider whether a power-of-attorney issued in England and intended to operate in British India complies with the fiscal requirements of the stamp laws in England. It is sufficient if such power-of-attorney is stamped according to the stamp laws of British India.<sup>2</sup>

8. ('33) Mad S M p. 17. (Citing, B. P. 336, 5th April 1888.)

[See also ('33) Mad S M p. 18. (Citing, B. P. 1195 R. Mis, 6th September 1918.)]

9. ('33) Mad S M p. 17. (Citing, B. P. 1510, 7th July 1881.)

10. ('33) Mad S M p. 17. (Citing B. P. 491, 22nd August 1887.)

11. (1908) 1908 App Cas 22 (26) : 77 L J K B 55 : 97 L T 814, *Inland Revenue Commrs. v. Maple and Co.*

12. ('28) 15 AIR 1928 Pat 134 (137) : 7 Pat 99 : 105 Ind Cas 502, *Herbert Francis v.*

*Mahomed Akbar.*

13. ('33) Mad S M p. 88. (Citing B. Ps. 243, 16th April 1891; 524, 12th November 1891; 131, 11th April 1894.)

#### S 3—NOTE 21

1. (1823) 3 Dow & Ry (KB) 190, *James v. Catherwood.*

(1775) 98 E R 1120 (1121) : 1 Cow 341 (343), *Hilman v. Johnson.*

2. ('96) 23 Cal 187 (188), *In the goods of McAdam.*

Also see Art. 48 Note 9.



This principle is, however, subject to another principle of international law that an instrument as to its form and solemnities is to be governed by the *lex loci contractus* and not by the *lex solutionis* (Story's *Conflict of Laws*).<sup>3</sup> In other words, whether a document is valid or invalid depends upon what the substantive law was at the time and place of its execution. If at such time, it was, according to that law, invalid there, it is and continues invalid everywhere and for all times. If, however, at such time, it was not invalid according to that law, but merely inadmissible in evidence according to the adjective law (*lex fori*) of the place of its execution, it is not and does not continue so inadmissible except where and whilst such or similar law is in force, its inadmissibility like all other matters of procedure, being regulated by the *lex fori* of the place where the suit is brought in which it is sought to be used<sup>4</sup>. Thus, if the law of the foreign country in which the document was executed provides no more than that the agreement shall *not be received in evidence* because it is not stamped, then the agreement may be sued upon and enforced in a court in British India; but if the law of the foreign country provides that, by reason of the want of stamp the agreement itself which is contained in the unstamped document shall be *void*, then the plaintiff cannot succeed in a Court of British India because *ex hypothesi* there would be no contract on which he could succeed.<sup>5</sup>

**22. Instrument not duly stamped—Effect.**—The effect of not duly stamping an instrument chargeable with duty is stated in S. 35 of this Act. The effect of S. 35 is to make an unstamped document inadmissible in evidence, and unable to be acted upon, registered or authenticated by persons having authority to receive evidence or by any public officer. It does not, however, affect the *validity* of the document.<sup>1</sup>

**23. Time for stamping documents.**—See S. 17, 18 and 19.

**24. What Act applicable.**—The stamp duty chargeable on an instrument must be decided with reference to the Act in force at the *date of the execution* of the document.<sup>1</sup>

3. ('70) 7 Bom H C R (AC) 140 (141), *Narayan Sadashiv v. Bapuji Balal*.

('11) 33 All 571 (573) : 10 Ind Cas 247 (DB), *Amina Begam v. Nawab of Rampur*.

4. ('73) 1873 Bom P J 112 (DB), *Vinayak Lakshman v. Mahadaji Damodar*.

(1870) 23 L T 578 (579) : 40 L J Bey 25 : 19 W R (Eng) 83 : 6 Ch App 64, *Ex parte Melbourne*; *In re Melbourne*.

5. ('18) 5 AIR 1918 Bom 211 (211) : 42 Bom 522 : 46 Ind Cas 174 (DB), *Dhondiram Chatrabhuj v. Sadasukh Savatram*.

('30) 17 AIR 1930 Mad 1004 (1008) : 53 Mad 968 : 128 I. C. 870 (DB), *Venkata Rami v. Sri Bhupal Rao*.

('16) 3 AIR 1916 Mad 284 (285) : 38 Mad 746 : 21 Ind Cas 445 (DB), *Lakshammal v. Narasimharaghava Iyengar*.

(1797) 101 E R 953 (955) : 4 R R 433, *Alves v. Hodgson*.

(1850) 5 Ex 275 (279) : 19 L J Ex 289 : 155 E R 118, *Bristow v. Sequeville*.

(1812) 170 E R 1343 (1343) : 3 Camp 166 (167), *Olegg v. Levy*.

(1826) 38 E R 368 (368) : 5 L J (OS) Ch 55, *Wynne v. Jackson*.

(1907) 2 K B 735 (751) : 77 L J K B 71 : 97 L T 155, *Smith v. Prosser*.

Also see S. 19 Note 5.

#### S 3—NOTE 22

1. ('37) 24 AIR 1937 Cal 765 (766) : I L R (1937) 1 Cal 257 : 173 Ind Cas 263, *Gulzarilal Marwari v. Ramgopal*.

('73) 1873 Bom P J 112, *Vinayak v. Mahadaji*.

('26) 13 AIR 1926 Cal 877 (878) : 53 Cal 515 : 95 Ind Cas 483 (DB), *Joyman Bewa v. Easin Sarkar*.

('21) 8 AIR 1921 Sind 80 (81) : 15 Sind L R 135 : 65 Ind Cas 37 (DB), *Naraindas v. Jassomal*.

('94) 1894 Pun Re No. 69 page 229 (231) (DB), *Damodhar Das v. Major Doran*.

Also see S. 35 Note 7.

#### S 3—NOTE 24

1. ('82) 5 Mad 394 (396) (FB), *Reference under Stamp Act, S. 46*.



25. Government, liability of, to pay stamp duty—Proviso 1.—Under the Act of 1860 all instruments in which the Government was a party were exempt from stamp duty. Under that Act, a security bond executed by a third party to an Abkari renter was held not to be exempt from stamp-duty.<sup>1</sup>

Under the Act of 1862, instruments executed by or on behalf of the Government were exempt from stamp duty.

Under the Act of 1879 and the present Act, an instrument executed by, or on behalf of, or in favour of the Crown is exempted from duty *only in cases where, but for this exemption, the Crown would be liable to pay the duty chargeable in respect of such instrument*. Hence, in determining whether an instrument to which Government is a party comes under this exemption, regard must be had to S. 29 which prescribes the parties by whom duty is payable.<sup>2</sup> In the case of a sale or lease of waste land by the Government the stamp duty would be payable by the grantee or lessee and the exemption therefore would not apply.<sup>3</sup> Nor would it be applicable in the case of a mortgage-deed executed in favour of Government, the stamp-duty being payable by the mortgagor.<sup>4</sup>

Similarly, in the case of an exchange of land with Government, the exemption would not in terms apply as the Government is not liable to pay the duty chargeable in respect of such instrument, it is only liable to pay *half* the duty.<sup>5</sup> But such exchanges are exempt from duty under Government Notification issued under S. 9.<sup>5a</sup>

In the case of ferry tolls and similar matters the Deputy Commissioner usually grants a lease or *patta* and takes a counterpart or *kabuliat* from the lessee specifying the conditions of the lease. Under S. 29 the duty on a lease is payable by the lessee and that on the counterpart by the lessor. Hence the exemption applies to the *kabuliat* but not to the *patta*.<sup>6</sup>

Suppose the Government has undertaken by means of a special contract under S. 29 to bear the expenses of the stamp. It would appear that the exemption under proviso 1 will not apply in such a case.<sup>6a</sup>

Where a local body acts as a Government agency for the transaction of duties devolving upon Government as part of its ordinary administration, such as making roads, erecting Government buildings, etc., this proviso would apply.<sup>6b</sup>

Government sanads of jagirs and conveyances of land without pecuniary consideration are exempted by Government of India Notification No. 6.—Stamps, dated 12th September 1931.<sup>7</sup>

#### S 3—NOTE 25

1. ('70) 1 Mad H C R 190 (191) (DB), *Ramaswami Chetty v. Pappa Reddi*.

2. ('34) Pun S M Chap 3, p. 7.

3. ('34) Pun S M Chap 3, p. 7.

4. ('34) Pun S M Chap 3, p. 7.

5. ('34) 21 AIR 1934 Bom 231 (233): 58 Bom 437: 151 Ind Cas 911 (SB), *In the matter of Indian Stamp Act, 1890*.

5a. See ('34) 21 AIR 1934 Bom 231 (233): 58 Bom 437: 151 Ind Cas 911 (SB), *In the matter of Indian Stamp Act, 1890*. (Clause 85 of the Notification of Exemption, dated 12th September 1931, made in pursuance of the powers conferred by S. 9, Stamp Act, exempts from stamp duty instrument of exchange executed by a private person where a land

is given by him for public purposes in exchange for other land granted to him by the Government. The exemption is intended to bring in all exchanges between any person and Government where land is being acquired by Government for public purposes.) Also see S. 29 Note 10.

6. ('33) Mad S M p. 18. (Citing B. Ps. 356, Mis. 20th February 1904 and 756. R, Mis., 15th April 1904.)

('34) Pun S M Chap 3, p. 7.

6a. See ('33) Mad S M p. 18-19. (Citing, B. P. 322-R., Mis., 18th November 1925.)

6b. ('34) Pun S M Part I-B, Ch. 3, para 3. (Citing Financial Commissioner's letter No. 6873, dated 13-9-1884.)

7. ('34) Pun S M Chap 3, p. 7.



The instrument to come under the exemption must be executed by, or on behalf of, or in favour of the *Government*. A mortgage executed by the Collector under the provisions of S. 17 of the Bundelkhand Alienation of Land Act (II of 1903) cannot be said to be executed in favour of, or on behalf of Government and is not therefore exempt from stamp duty.<sup>8</sup>

**26. Proviso 2.**—This proviso exempting from duty instruments of sales, mortgages and other dispositions of registered ships, was for the first time added in the present Act by the Select Committee in order to bring the Indian law in conformity with the law of the United Kingdom as stated in S. 721 of the Merchant Shipping Act, 1894 (57 and 58 vict., c. 60) and in the second general exemption at the end of the first schedule of the English Stamp Act, 1891 (54 and 55 vict., c. 39).

Act XIX of 1838 mentioned in the proviso is Bombay Coasting-Vessels Act which provides for the registration of vessels trading coastwise and also fishing-vessels and harbour-craft.

A Steamship Company issued a debenture bond for £1000 which was a marketable security. The debenture was one of a series protected by a trust-deed. It purported to create a charge upon three ships belonging to the Company. These ships had previously been mortgaged by legal mortgages registered under the Merchant Shipping Act to trustees for the debenture-holders. The trust-deed contained covenants for payment of principal and interest and provisions for the maintenance and registration of the security usual in trust-deeds. The debenture provided that the holder should have the benefit, *pari passu* with other debenture-holders, of the mortgages. It was held that the debenture bond was not an instrument for the disposition of a ship within cl. (2) of the general exemptions contained in Sch. I of the English Stamp Act, 1891 but was liable to duty as a marketable security under the same schedule.<sup>1</sup>

**27. Surcharge.**—The rates of duty given in schedule I are subject to a surcharge in certain Provinces. (See Note 5 under the heading "(A) scheme of arrangement" given at the beginning of Schedule I.)

**\*4. (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule.**

**(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument :**

\*[1879—S. 6 ; 1869—S. 13 ; 1862—Sch. A, Art. 66—General Exemptions, Note (b) ; 1860—Sch. A, Art. 19 Note. Cf. (1870) 33 & 34 Vict., c. 97—Ss. 76, 77 (2); (1891) 54 & 55 Vict., c. 39—Ss. 58 (3), 61 (2).]

(16) 3 AIR 1916 All 171 (172) : 38 All 351 : 34 Ind Cas 280 (FB), *Simwarpuri v. Matabadal*.

NOTE 26

1. (1911) 2 KB 1001 (1008) : 81 LJKB 75 : 105 LT 482, *Deddington Steamship Co. Ltd. v. Commissioners of Inland Revenue*.



Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

### Provincial Amendments.

#### BENGAL

(i) In sub-section (1) after the words and figure "in Schedule I" insert the words and figures "or in Schedule IA, as the case may be."—*Beng. Act III of 1922, S. 5(a)*. [1-4-1922.]

(ii) In the same sub-section for the words "one rupee" substitute the words "two rupees."—*Beng. Act XII of 1935, S. 3*. [1-6-1935.]

(iii) In the same sub-section for the words "instead of the duty (if any) prescribed for it in that schedule" substitute the words and figures "if the principal instrument be chargeable with the duty prescribed in Schedule I, or with a duty of one rupee eight annas, if the principal instrument be chargeable with the duty prescribed in Schedule IA, instead of the duty (if any) prescribed for such other instrument in Schedule I or Schedule IA, as the case may be."—*Beng. Act III of 1922, S. 5 (b)*. [1-4-1922.]

#### BIHAR

Same as that of Bengal (i) and (iii).—*Bihar Act VI of 1937, S. 5*. (1-1-1938.)

#### BOMBAY

Same as that of Bengal (ii).—*Bom. Act II of 1932, Part IV, S. 15(1)*. [1-4-1932.]

#### CENTRAL PROVINCES

Same as that of Bengal (i) and (iii).—*C.P. Act VI of 1939, S. 4*. [1-7-1939.]

#### MADRAS

(i) Same as that of Bengal (i).—*Madras Act VI of 1922, S. 5 (a)*. [25-4-1922.]

(ii) In sub-section (1) after the words, "one rupee" insert the words "or three rupees."—*Madras Act XVI of 1943, S. 4 (a)*. [1-10-1943.]

(iii) For the words "in that schedule" substitute the words, figures and letter "in Schedule I or in Schedule IA as the case may be."—*Madras Act VI of 1922, S. 5 (c)*. [25-4-1922.]

#### ORISSA

Same as that of Bengal (i) and (iii).—*Orissa Act VI of 1943, S. 5*. [26-4-1943.]

#### PUNJAB

(i) In sub-section (1) for the words and figure "in Schedule I" substitute the words, figure and letter "in Schedule IA."

(ii) In the same sub-section after the words "one rupee" insert the words "and eight annas."—*Punjab Act VIII of 1922, S. 6*. [15-1-1923.]

#### SIND

Same as that of Bombay.—*Sind Act I of 1938, S. 2*. [31-3-1938.]

#### UNITED PROVINCES

(i) Same as that of the Punjab (i).—*U. P. Act III of 1936, S. 4*. [1-5-1936.]

(ii) In the same sub-section for the words "one rupee and eight annas" substitute the words "one rupee and fourteen annas."—*U. P. Act XVII of 1948, S. 5 (1)*. [1-4-1948.]

#### Synopsis

- |  |   |
|--|---|
| 1. Legislative changes.  | 6. Instrument containing several sheets.                        |
| 2. Provincial Acts.  | 7. Schedule to deed.  |
| 3. Scope of the section.   | 8. Correspondence—Agreement contained in. See Note 25 on S. 35. |
| 4. Several instruments employed for completing transaction—Illustrative cases. | 9. Deed confirming invalid document duly stamped.               |
| 5. Document altering terms of prior document.                                  |   |



**1. Legislative changes.**—The corresponding provision in the Stamp Act of 1860 was contained in a note to Art. 19 of Sch. A. The note was as follows :

“When of several Deeds, Instruments, or Writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed. In all cases, however, where there are more Deeds than one, every other Deed than the principal, requires the same Stamp as the principal Deed, if of value not exceeding eight rupees (which shall be the maximum stamp for collateral deeds), and all such collateral Deeds shall specify by their contents which other is the principal deed by which the conveyance has been effected, certifying that it is executed on the proper Stamp.”

This note, with slight verbal changes, was repeated as Note (b) to General Exemptions in the Act of 1862.

The Stamp Act of 1869, for the first time placed the provision in the form of a section. Section 13 of that Act provided as follows :

“Where more instruments than one are required for the completion of any transaction involving the execution of a mortgage-deed, settlement, conveyance, or lease, the proper stamp required by this Act for such mortgage-deed, settlement, conveyance, or lease, shall be borne by the principal instrument executed in such transaction, and each of the other instruments shall bear a stamp of one rupee.

The parties may determine for themselves which of such instruments shall for the purposes of this section be deemed to be the principal instrument : Provided that, where the instruments are liable to different rates of duty under this Act, the instrument liable to the highest of such rates shall be deemed to be the principal instrument.”

Section 6 of the Stamp Act of 1879 omitted the proviso recasting the provision as follows :

“Where, in the case of any sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.”

The present section is similar to the above section except that the reference to “lease” has been omitted and the proviso, which was omitted in the previous Act, has been re-inserted “to make it clear that the option given to the parties to elect which instrument shall be considered as the principal instrument is not to be used for the purpose of evading stamp duty.”<sup>1</sup>

**2. Provincial Acts.**—Section 6A enacted in Bengal, Bihar, Central Provinces, Orissa, Punjab and the United Provinces provides that an instrument other than the principal instrument received in the Province shall be chargeable with higher duty which is payable on the principal instrument when received in the Provinces, unless it is proved that the higher duty has been paid on the principal instrument.

See also the amendments noted below the section.

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Section 4—NOTE 1

1. Statement of Objects and Reasons, Cl. 4.



3. **Scope of the section.**—This section only applies where the following elements are present :

1. There must be *several instruments* employed.
2. The instruments must be employed to complete the *same* transaction.
3. The transaction must be a *sale, mortgage or settlement*.

Sections 5 and 6 deal with cases where there is only *one* instrument.

If the transactions effected by two or more instruments are *distinct*, this section has no application.<sup>1</sup> Hence, the section does not apply to a *series* of instruments effecting at different stages different dispositions of the property.<sup>2</sup>

A counterpart or duplicate is not a document employed for *completing* the transaction. Hence, this section does not apply to a counterpart or duplicate. But special provision is made for the stamping of duplicates and counterparts under Art. 25.

4. **Several instruments employed for completing transaction—Illustrative cases.**

1. A deed of sale executed by an uncle was endorsed by his nephew giving his assent to the sale. It was held that, as the assent was considered to be necessary by the parties, the conveyance and the assent were employed for completing the transaction and, as such, the assent required a one-rupee stamp.<sup>1</sup>

2. A *Gymkhana Club*, by a duly stamped trust-deed mortgaged its assets as security for the repayment of the debenture stock it had issued. The certificates issued to the debenture-holders contained no promise to repay any debt nor any acknowledgment thereof, but simply stated the amount and the names of the stock-holders and that the stock was constituted and secured by the trust-deed. The certificates were held to be instruments employed for completing the transaction of mortgage.<sup>2</sup>

3. One T executed a deed of gift of his properties in favour of his brother S. The deed bore a stamp of Rs. 1125. By another deed of even date, S promised to maintain T during his lifetime. This deed was stamped with a stamp of Rs. 10. It was held that the transaction came within the word "settlement" and that the two instruments were intended by the parties to be employed in completing that transaction.<sup>3</sup>

4. One A by a deed agreed to leave the whole of his estate to three persons as his successors, on condition that they should maintain him during his lifetime, pay off his debts and perform his funeral ceremonies. On the same day the donees executed an agreement providing that one of them should manage A's estate and the others should pay him a certain amount annually. It was held that the deed by the donees was a mere explication of the terms of the document executed by A and that the two documents were to be read together as parts of one and the same transaction.<sup>4</sup>

S 4—NOTE 3

1. ('05) 3 Low Bur Rul 205 (207) (FB), *Reference under Stamp Act, Section 57 (1)*.
2. (1902) 1 K B 142 (152) : 18 T L R 126, *Russell v. Inland Revenue Commrs.* ((1901) 2 K B 342 affirmed.)

NOTE 4

1. ('89) 13 Bom 281 (284) : 1888 Bom P J 259. *In the matter of Hanmappa*. (This case was impliedly overruled in 17 Bom 687 in so far as it expressed an opinion that the

Collector ought to refuse to stamp the endorsement because it was made in contravention of S. 13 (present S. 14) of the Act of 1879.)

2. ('27) 14 A I R 1927 Rang 37 (39) : 4 Rang 456 : 99 Ind Cas 315, *In re Rangoon Gymkhana Club*.
3. ('15) 2 A I R 1915 All 198 (199) : 37 All 264 : 28 Ind Cas 348 (FB), *In the matter of Maharaj Somesher Dutt*.
4. ('87) 7 Bom 34 (38) (DB), *Dadoba v. Krishna*.



5. A company sold a piece of land for Rs. 300,000. Rupees 5,000 were already paid and, as security for the payment of the balance in yearly instalments, the purchaser executed a mortgage of the land. The conveyance was properly stamped with *ad valorem* duty, but the mortgage was stamped with a stamp of one rupee. It was held that the mortgage-deed was not employed for completing the sale, but was an independent transaction chargeable with stamp duty under Art. 40.<sup>5</sup>

5. **Document altering terms of prior document.**—Where after a transaction has been completed, another instrument is executed materially altering the terms of the prior document the subsequent document cannot be considered as one employed for *completing* the transaction and this section will not apply to such a case. Thus, in a case arising under the corresponding section of the Stamp Act of 1869, after a complete lease had been executed, stamped and registered, another document was executed with a view to alter the first and substitute new terms so far as the rent was concerned. It was held that the later document required the stamp duty provided for a lease.<sup>1</sup>

In the undermentioned case,<sup>2</sup> two brothers executed an instrument setting forth a family arrangement regarding their joint property. The instrument was stamped with the duty prescribed for settlement of property. Subsequently, after a short interval, the brothers executed another instrument by which the settlement of certain moneys and properties covered by the first deed was readjusted. No new property was introduced in the second deed. Both deeds were to be equally binding and were contingent upon the happening of other events which were at the time of the execution of the second deed future events. The intention of the parties was that the two deeds were to form and be regarded as one deed. It was held that the case fell within this section and the first deed having been charged with the stamp duty prescribed in the schedule for settlement of property, the second deed was chargeable with a duty of one rupee only.

This decision shows that where the transaction is the same the mere fact that one of the documents is of a later date than the other and is executed for the purpose of modifying the provisions of the earlier one will not make this section inapplicable. It will depend on the circumstances of each case whether the documents are executed in course of the same transaction.

6. **Instrument containing several sheets.**—Several sheets of paper used for writing an instrument constitute only one instrument; they cannot be regarded as several instruments. They are, therefore, not separately liable to stamp duty.

7. **Schedule to deed.**—Schedules referred to in any agreement, lease, bond, deed, or other instrument were chargeable with stamp duty under Arts. 48 and 63 of the Stamp Acts of 1860 and 1862 respectively. This provision was omitted in the subsequent Acts. In a case arising under the Stamp Act of 1869 it was held that a

5. ('06) 3 Low Bur Rul 205 (207) (FB),  
*Reference under Stamp Act, Section 57 (1).*

S 4—NOTE 5

1. ('73) 20 Suth W R 36 (37) (DB), *Byjnath Dutt Jha v. Mt. Putsohee Dobain*.

[See also ('31) Beng S M Vol 1 p. 18. (A deed modifying but not materially altering the conditions of an original lease or a supplementary deed purporting to rectify mistakes in a boundary in a *kabuliyat* previously registered is an agreement and should be stamped as such.)]

[See however ('40) Bihar S M page 100. (Supplementary deed purporting to rectify certain mistakes in boundary in a *kabuliyat* previously registered if the parties wished such a document to be treated as part of the original lease, they must pay the same stamp duty as would be payable if a fresh lease were made. (Board's file No. 117 of 1910).)]

Also see S. 2 (16) Noto 19.

2. ('15) 2 A I R 1915 All 81 (82) : 37 All 159 : 27 Ind Cas 731 (DB), *In the matter of Shambhu Dyal*.



schedule appended to a deed of sale was not a "collateral instrument" within the meaning of cl. (15) of Sch. II of that Act and as such it did not require a stamp.<sup>1</sup>

A schedule annexed to an instrument merely forms part of the instrument and cannot be treated as an instrument in itself. It will not, therefore, fall within the expression "other instruments" in this section so as to be liable to the fixed stamp duty provided for such instruments.

8. Correspondence—Agreement contained in—See Note 25 on Section 35.

9. Deed confirming invalid document duly stamped.—A deed of conveyance was executed under a power-of-attorney. The power-of-attorney was not produced; but annexed to the deed was what professed to be a copy of the power, the execution of which was, however, not proved. A second deed was produced confirming what had been done under the power, and containing also operative words of conveyance. This deed was not stamped with *ad valorem* duty. It was objected that the first deed was inoperative without the second, and that the second could not be read for want of proper *ad valorem* duty. It was held that to effect the conveyance, both the deeds were wanted; but it was sufficient that one of them had the stamp which the conveyance constituted by the two required.<sup>1</sup>

\*5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

#### Synopsis

- |  |   |
|--|---|
| 1. Legislative changes.                              | 7. Lease-deeds.   |
| 2. English law.                                      | 8. Several parties.   |
| 3. Scope.  | 9. Principal and surety.  |
| 4. Instruments relating to several distinct matters. | 10. Several properties.   |
| 5. Illustrative cases.                               | 11. Stamp duty paid sufficient for one of the matters covered by the deed—Effect. |
| 6. Penalty clause.                                   | 12. Instrument covering several sheets. See Note 6 on Section 4.                  |

1. Legislative changes.—Act XXXVI of 1860 and Act X of 1862 did not contain any provision corresponding to the present section.

Act XVIII of 1869 contained the following in the proviso to paragraph XIV:

"Provided that when any one instrument purports for distinct considerations, to convey by way of sale, to lease, to give, or to mortgage two or more subject-matters, or to convey by way of sale, to lease or to give one subject-matter and to mortgage another,

such instrument shall be chargeable with the aggregate amount of the duties to which instruments effecting separately each of such conveyances, leases, gifts or mortgages would be liable under this Act."

\*[1879—S. 7, para. 1; 1869—S. 14, proviso. Cl. (1870) 33 & 34 Vict. c. 97—S. 8 (1); (1891) 54 & 55 Vict. c. 39—S. 4 (a).]

#### S 4—NOTE 7

1. ('71) 6 Mad H C R (App) 36 (36), *Reference under the Stamp Act.*

#### S 4—NOTE 9

1. (1841) 2 Q B 249 (251); 11 L J Q B 17; 114 E R 97, *Doe d. Priest v. Weston.*



Paragraph I of S. 7 of Act I of 1879 is the same as the present section.

**2. English law.**—Section 4 of the English Stamp Act, 1891 (54 & 55 Vict., Ch. 39) which corresponds to this section runs as follows :

“Section 4 : Except where express provision to the contrary is made by this or any other Act,—

(a) An instrument containing or relating to several distinct matters is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the matters ;

(b) An instrument made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration or considerations, is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations.”

**3. Scope.**—This section deals with the stamping of what may be called a multifarious instrument, i.e., an instrument which comprises or relates to several distinct matters.

This section is the converse of S. 4. Section 4 deals with cases in which *several* instruments are employed to complete *one* transaction while this section deals with cases in which *one* instrument embodies *several* matters.

Section 14 deals with cases in which several *instruments* are sought to be engrossed on the same stamp paper. Under this section the instrument is only one but the matters dealt with are several distinct ones.

Under this section, the inadequacy of stamp due to the non-compliance with the section will affect all the matters comprised in the document. But under S. 14 non-compliance with the section will not affect the first instrument engrossed on the stamp paper but only the subsequent instruments.

Where an instrument covers only one matter but is of an ambiguous nature and is such as to fall under two or more articles in Sch. I, S.6 will apply and the instrument will be chargeable with the highest duty applicable to it under the schedule.

**4. Instruments relating to several distinct matters.**—The test to see whether an instrument comprises or relates to several distinct matters is to consider whether it embodies a single transaction or two or more distinct transactions.<sup>1</sup> This is a question of construction in each case. But the following points may be noted as being of a general nature :

Where a provision in an instrument is such that even had it not been expressed, it would have been implied by the law, it cannot be regarded as a ‘distinct matter’.<sup>2</sup>

Provisions which are merely ancillary to the leading object of an instrument cannot be considered as being distinct matters.<sup>3</sup>

#### Section 5—NOTE 4

1. ('33) 20 AIR 1933 All 321 (323, 325) : 55 All 468 : 143 Ind Cas 486 (FB), *Ram Swarup v. Joti*.
- ('82) 8 Cal 254 (259) : 10 Cal L Rep. 33 (FB), *Ex parte Hill*.
- ('83) 1883 Bom PJ 277, *In re Vithal Govind*. (The ‘distinct matters’ referred to in S. 7 of Act I of 1879 means matters of different kinds such as an agreement for service and a lease which cannot blend into one or at any

- rate are not so intended or conceived by the parties that they can be regarded as merely parts of a single aggregate.)
2. Halsbury's *Laws of England*, Vol. 24, page 708.
3. Halsbury's *Laws of England*, Vol. 24, pages 708, 709.
- (1902) 1 KB 441 (445) : 71 L J K B 92 : 85 L T 663 : 50 W R (Eng) 280, *British Electric Traction Co. v. Commissioners of Inland Revenue*.



The usual covenants in deeds of sale, lease, etc., are not "distinct matters."<sup>3a</sup>

Where several persons join in executing an instrument, it cannot be treated as comprising several distinct matters where there is community of subject-matter as regards the property or interest affected.

Where several properties are transferred for a single consideration, the instrument covers only one matter and not distinct matters.

An instrument may relate to the same matter and not to several distinct matters although it contains several distinct *contracts*.<sup>4</sup>

In applying this section what must be considered is what the parties concerned purported to provide for by the instrument and not whether any particular provision was necessary or might have been dispensed with.<sup>5</sup>

See also the undermentioned case.<sup>6</sup>

### 5. Illustrative cases.—The meaning of "distinct matters" under this section

('03) 26 Mad 473 (475). *Reference under Stamp Act S. 61 (1)*. (Where the consideration for a lease consisted partly of rent to be paid each month and partly of a sum equal to a month's rent paid in advance and to be repaid at the end of the lease, the instrument was not to be regarded as dealing with two distinct matters under S. 7 of Act I of 1879, but as relating only to one matter.)

(1839) 150 E R 1553 (1554): 8 LJ Ex 80. *Ramsbottom v. Robert Davis*. (By a written agreement three persons bound themselves that in consideration of A's discharging a debt due from B to C, amounting to £200 with the costs thereon, each of the three would severally pay £50 and  $\frac{1}{3}$  part of such costs and give a bond, bill or note for his own proportion. *Held*, "this is only one transaction and only one stamp is necessary. Here each of the parties entered into one agreement by which each bound himself to a certain extent, in consideration that the others would do the same. This is similar to *Bown v. Ashley*, (1805) 127 E R 467 where it was held that if several persons bind themselves in penalty by one bond, conditioned for the performance by each and every of them of the same matter, such bond required only one stamp. (There are several cases of the same class, especially those of the composition-deed. See also *Davis v. Williams*, (1811) 104 E R 358: 13 East 232.)")

[See also ('85) 9 Bom 417 (418): 1885 Bom PJ 47 (FB), *Eknath v. Jagannath*. (In consideration of J and S giving up their claims to property, E agreed to discharge certain debts and to pay an annuity to J and S. *Held*, the instrument should be stamped as a release only.)]

3a. ('31) Beng S M Vol. I p. 18. (Citing, Advocate General's opinion enclosed in letter No. 155, dated the 31st January, 1884, from the Solicitor to the Government of India.) ('40) Bihar S M p. 106. (Do.).

4. ('95) 1895 Pun Re No. 102 p. 483 (486) (DB), *Musa v. Kahan*. (A good illustration of this principle is furnished by the case of a

bond with sureties in which contracts of the principal and sureties are written separately. It has been held that single stamp is sufficient for both as they relate to the same matter though the contracts are distinct.) ('10) 1910 Pun Re No. 15: 5 Ind Cas 812 (813) (FB), *In re Stamp duty*.

('28) 15 AIR 1928 Lah 370 (371): 105 Ind Cas 746 (DB), *Tej Ram v. Maqbal Shah*. (Where the transaction is one and one only, the subject matter of the agreement being the repayment of the amount advanced, the mere fact that there are two covenants in the deed, the first making certain properties chargeable in the first instance, and the second providing that in the event of the sale proceeds of the aforesaid properties being found insufficient, the mortgagees would be entitled to proceed against certain other properties, does not in any way affect the question.)

('36) 23 AIR 1936 Cal 814 (814): ILR (1937) 1 Cal 461: 167 Ind Cas 202, *Radha Govinda v. Ram Brahma*. (Vakalatnama—Two stipulations—One by which pleader to receive certain fees for work to be done—Second by which pleader if not paid in advance not bound to appear—These two held not distinct matters.)

5. ('17) 4 AIR 1917 Mad 14 (17): 37 Ind Cas 984 (DB), *Rama Swami Iyer v. Gnanamani Nachiar*.

('36) 23 AIR 1936 Cal 814 (814): ILR (1937) 1 Cal 461: 167 Ind Cas 202 (DB), *Radha Gobinda v. Ram Brahma*.

6. (1929) 1 KB 608 (617): 98 L J K B 384: 143 L T 437, *Ansell v. Commissioners of Inland Revenue*. (The expression 'distinct matters' (in S. 4 of English Stamp Act) means matters which are distinct for the purposes of the Stamp Act. It two different classes of property are being transferred by the same words of assignment in the same document and those to different classes of property in the same document are different from the point of view of the Stamp Act and taxation, it seems that they must be distinct matters.)



has been considered in Note 4. The illustrative case law on the subject has been classified below under appropriate topical headings :

### 1 Deeds of conveyance.

#### A—Matters which are not distinct.

- (i) Conveyance and a stipulation to pay a part of the consideration in instalments. The latter is accessory to the conveyance.<sup>1</sup>
- (ii) The usual covenants for title in a deed of sale are not chargeable separately as indemnity bonds.<sup>2</sup>
- (iii) Deed of sale containing a clause whereby the seller mortgaged certain other properties as security for the due performance of his covenants.<sup>3</sup>
- (iv) A covenant in a deed of conveyance transferring shares in a company, that the transferee of the shares would hold them subject to the rules and regulations of the company.<sup>4</sup>
- (v) A statement in a deed of sale that a portion of the consideration was given as a present to the purchaser is not chargeable separately as a gift.<sup>5</sup>

#### B—Matters which are distinct.

- (i) Deed of sale of certain properties in liquidation of a part of the vendor's debts to the vendee, with a promise to pay the balance within a certain period and an agreement on the part of the creditor-vendees not to sue for the debts for that period. The deed constitutes three matters, a conveyance, a bond and an agreement.<sup>6</sup>
- (ii) Conveyance and an agreement that the property should be held as security for the debts as per terms of another instrument of mortgage.<sup>7</sup>
- (iii) Conveyance and release.<sup>8</sup>
- (iv) Conveyance and agreement by vendor to pay the assessment pending mutation of names in the Collector's register.<sup>9</sup>
- (v) Lease of one house and also agreement to sell several houses which is not accessory to the lease.<sup>10</sup>

### 2. Mortgage-deeds.

The following stipulations in a deed of mortgage were held not to be distinct

#### S 5 NOTE 5

1. (1827) 7 Ex 211 (217) : 41 L J Ex 106 : 26 L T 633 : 20 W R (Eng) 610, *Limmer Asphalte Paving Co. v. Commissioners of Inland Revenue*.

2. ('76) 1 Mad 133 (133) : 1 Ind Jur 128 (FB), *Reference by Board of Revenue*.

Also see S. 2 (5) Note 12, S. 2 (10) Note 18, S. 2 (22) Note 10 and Art. 34 Note 3.

3. ('20) 7 AIR 1920 Mad 225 (225) : 43 Mad 365 : 56 Ind Cas 154 (FB), *In re Secretary to the Commissioner*.

Also see S. 6 Note 7.

4. (1841) 2 Q B 321 (324) : 11 L J Q B 9 : 114 E R 126 (127), *Wolselay v. Cox*.

5. ('33) Mad S M p. 20. (Citing B. P. 2251, 1st July 1884.)

Also see S. 2 (10) Note 18.

6. ('36) 23 AIR 1936 Lah 449 (452) : 17 Lah 223 : 162 I C 774 (SB), *Shams Din v. Collector, Amritsar*.

7. (1908) 1 KB 865 (891, 893) : 77 L J K B 746 : 98 L T 405, *Suffield (Lord) v. Commissioners of Inland Revenue*.

8. ('87) 11 Mad 40 (41) (FB), *Reference under Stamp Act S. 46*. (A document purporting to be two instruments, one a conveyance written on the face of the paper and one a release, written on the back of the paper, which was impressed with 1 Rupee stamp—Thus contravening S. 14.)

9. ('91) 15 Bom 675 (677) (FB), *Sinapaya v. Shivapa*.

10. (1846) 8 Q B 371 (381) : 15 L J B Q 146 : 115 E R 916 : 70 R R 520, *Love loc v. Franklyn*.



matters within the meaning of this section, as they are the usual covenants in a properly drawn up mortgage-deed and are implied by law even if they are not expressly stated therein :

- (i) Assignment of policy of assurance with a covenant to spend for the premiums and to recover the expenses thereof and other necessary expenses as principal amount.<sup>11</sup>
- (ii) Mortgage of leasehold property—Stipulation that costs, charges and expenses of renewal to be a charge on the property mortgaged.<sup>12</sup>
- (iii) Mortgage of land—Covenant by the mortgagor to pay all taxes, rates and assessments on the land.<sup>13</sup>
- (iv) Stipulation in a deed of mortgage that mortgagor should pay to the mortgagee all the proper expenses incurred by the latter in defending his title in suits brought by the mortgagor's cosharers and also any debts charged upon the mortgaged property which the mortgagee might pay.<sup>14</sup> So also a stipulation to pay other necessary expenditure over the property incurred by the mortgagee.<sup>15</sup>
- (v) Stipulation that the promissory notes kept as security for the due performance of his contract by a contractor, should be returned to him on completion of the contract.<sup>16</sup>

See also the undermentioned case.<sup>17</sup>

### 3. Agreement of sale.

- (i) An agreement of sale of goods containing stipulations relating to payment of godown rents and fire insurance. The matters are not distinct as they are accessory to the main object of the agreement.<sup>18</sup>
- (ii) Agreement for purchase of estate with a stipulation securing purchase-money constitutes a single matter.<sup>19</sup>

### 4. Bought and sold notes.

A stipulation in a bought and sold note for sale of goods to refer any dispute to arbitration is not a separate and distinct matter.<sup>20</sup>

11. (1851) 155 E R 842 (845) : 21 L J Ex 49 : 7 Ex 28 (35), *Lawrance v. Boston*.

(See (1850) 5 Ex 1 (6) : 155 E R 1, *Caldwell v. Dawson*.)

12. (1843) 152 E R 929 (932) : 13 L J Ex 57, *Wronghton v. Turtle*.

13. (1838) 112 E R 973 (975) : 7 L J Q B 263, *Doe d. Mercer v. Bragg*.

14. ('85) 9 Bom 435 (437) : 1885 Bom P J 64 (FB), *Damodar Gangadar v. Vamanrao Lakshman*.

Also see S. 2 (5) Note 12, S. 2 (17) Note 23 and Art. 34 Note 3.

15. (1908) 1 K B 865 (888, 890) : 77 L J K B 746 : 98 L T 405, *Suffield (Lord) v. Commissioners of Inland Revenue*.

(1832) 131 E R 356 (359) : 1 L J C P 59, *Doe dem Scrutton v. Smith*.

16. ('88) 11 Mad 39 (40) (FB), *Reference under Stamp Act, S. 46*.

Also see S. 2 (17) Note 23 and Art. 5 Note 3.

17. (1844) 153 E R 100 (102) : 13 L J Ex 200 : 3 L T (O S) 58, *Doe d. Bowman v. Lewis*. (Mortgage-deed with an assignment by a

former mortgagee to whom part of the money is paid in satisfaction of his mortgage—*Held* that assignment does not require an additional stamp. An *ad valorem* stamp paid on the mortgage-deed is sufficient.)

18. ('92) 15 Mad 150 (152) (DB), *Kyd v. Mahomed*.

('36) 23 AIR 1936 All 481 (484) : 58 All 1083 : 163 Ind Cas 614 (SB), *In re Board of Revenue*. (Where the principal agreement embodied in the document was one for sale of sugarcane crop, and all the other covenants which followed were of subsidiary or auxiliary nature, and none of them was independent of the main agreement which it was the object of the parties to reduce into writing:—*Held* that the nature of the transaction was not changed.)

19. (1847) 136 E R 824 (827) : 17 L J C P 58 : 10 L T (OS) 88, *Rushbrock v. Hood*.

20. ('12) 39 Cal 669 (677) : 16 Ind Cas 153, *Bombay Co. Ltd. v. National Jute Mills Co. Ltd.*



## 5. Trust-deeds.

- (i) An instrument purporting to declare a trust of certain funds devoted to charity comprised of two amounts—Rs. 1,00,000 as the result of appeal to the public and Rs. 2,00,000 obtained from a trust already created by a will. The deed was stamped at Rs. 15. It was held that it comprised two distinct matters, as it operated as a deed of settlement in respect of Rs. 1,00,000 and was chargeable at the rate of As. 8 per cent. and as regards Rs. 2,00,000 it was an appointment deed chargeable with the duty of Rs. 15 under Art. 7.<sup>21</sup>
- (ii) An order appointing new trustees and vesting the property belonging to charity in them is a document comprising two distinct matters.<sup>22</sup>
- (iii) An agreement between several press owners was to the effect that all the profits made by each individual member should be shared by all in a fixed proportion with the proviso that Rs. 50,000 should be accumulated and held in trust as security for the due maintenance and observance of the agreement, before any profits were divided. It was held to relate to two distinct matters namely an agreement and a declaration of trust.<sup>23</sup>

## 6. Promissory note.

A joint and several promissory note executed by two parties provided for payment of the money by instalments and contained a clause that any time given to or security taken from or composition or arrangement entered into with either of the parties should not prejudice the rights of the holder against the other. It was held that the note did not comprise several distinct matters and was a valid single promissory note.<sup>24</sup>

## 7. Deed of apprenticeship.

A deed of apprenticeship by which an apprentice is bound to serve for seven years with two persons, for four years with one person and three years with another to learn two different trades is an instrument containing on matter only.<sup>25</sup>

## 8. Miscellaneous.

## A. Matters held to be distinct.

- (i) A deed of separation between a husband and wife with a covenant on the part of the husband to pay the wife for her separate use a certain sum at specified dates.<sup>26</sup>

(16) 3 AIR 1916 Sind 86 (92) : 10 Sind L R 14 : 35 Ind Cas 449, *Tarachand Ganshamdas v. Louis Dreyfus and Co.*

[See (13) 40 Cal 219 (229) : 18 Ind Cas 978 (DB), *Baijnath v. Ahmed Musaji*.]

Also see S. 6 Note 7, Art. 5 Note 10 and Art. 43 Note 3.

[But see (09) Ind Cas 371 (374) (Cal), *Hurdawary Mull v. Ahmed Musaji*.]

21. (11) 35 Bom 444 (447) : 11 Ind Cas 982 (FB), *In re Abdulla Haji Dawood*.

Also see Art. 58 Note 7.

[But see (1840) 113 E R 718 (720) : 11 L J Q B 19, *Doe d. Hartwright v. Fereday*. (The question in this case was whether a deed by which certain lands were conveyed on certain trusts and in which a declaration of similar trusts was also made as to certain Government stocks is to be considered as two deeds for the purpose of the Stamp Act—Held, “we find no provision in the Act except in cases of conveyances by way of

sale that where a deed operates on several subject-matters in several ways, it shall have several stamps; and in absence of any such provision we think that one stamp is sufficient.”)]

22. (1877) 3 Ex D 46 (48) : 37 L T 612 : 26 W R (Eng) 115, *Hadgett v. Commrs. of Inland Revenue*.

23. (87) 11 Mad 216 (217) (FB), *Reference under Stamp Act, S. 46*.

24. (1903) 1 K B 531 (533) : 72 L J K B 208 : 88 L T 52 : 51 W R (Eng) 374, *Kirkwood v. Carroll*.

(1892) 61 L J Q B 446 (448) : 66 L T 532, *Yates v. Evans*.

25. (1828) 108 E R 1036 (1037) : 6 L J (OS) M C 107, *Rex v. Louth*.

Also see Art. 9 Note 1.

26. (1898) 2 Q B 290 (293) : 67 L J Q B 694 : 78 L T 745, *Lewis v. Inland Revenue Commissioners*.



- (ii) Acknowledgment of debt and release.<sup>27</sup>
- (iii) A deed purporting to be a power-of-attorney was also held to be a mortgage-deed and an agreement.<sup>28</sup>

*B. Matters held not to be distinct.*

- (i) Stipulation in a *vakalatnama* that the pleader is to receive certain fees for the work done for the client in a case in which it is filed and that the pleader is not bound to appear and act if fees are not paid.<sup>29</sup>
- (ii) A memorandum by which, in consideration of A withdrawing a distress for rent exceeding £ 20 against B until a future date, B agrees that in case of default it shall be lawful for A to enter and distrain does not require an agreement stamp.<sup>30</sup>
- (iii) Memorandum that certain bills are deposited with a person who agrees thereby to return them on demand being an agreement to do what he is bound by law to do.<sup>31</sup>
- (iv) The documents in question were held to be acknowledgments only and did not contain any other distinct matter.<sup>32</sup>

See also the undermentioned case.<sup>33</sup>

**6. Penalty clause.**—A penal clause in an instrument being subsidiary and accessory to the main object of the deed is not a distinct matter. The following cases are based on this principle :

- (i) An instrument by which certain property was sold for Rs. 200 contained a clause that if for any reason the property did not pass legally to the purchaser, he should get Rs. 800 as compensation. The question was whether the document contained two distinct matters, namely, a conveyance and an indemnity bond. It was held the promise to pay Rs. 800 could not be treated as a separate obligation chargeable with duty.<sup>1</sup>
- (ii) A deed purporting to be a bond recited in the condition that the defendant had sold a term of 21 years in a certain public house for £1000 and a

27. ('17) 4 AIR 1917 Mad 14 (16, 17) : 37 Ind Cas 984 (DB), *Ramaswami Iyer v. Gnanamani Nachiar*.

Also see S. 6 Note 7.

28. ('45) 32 AIR 1945 Lah 69 (72) ILR (1946) Lah 185 (SB), *Miran Baksh v. Emperor*.

29. ('36) 23 AIR 1936 Cal 814 (815) : I L R (1937) 1 Cal 461 : 167 Ind Cas 202 (DB), *Radha Gobinda v. Ram Brahma*. (Such a *vakalat* is chargeable only under Art. 10 of Sch. II of the Court-Fees Act and cannot also be charged as an agreement under the Stamp Act. In the absence of any definite provision of law a *vakalatnama* is not chargeable both under the Court-Fees Act and the Stamp Act.)

30. (1843) 134 E R 779 (781) : 1 L T (OS) 109, *Hill v. Ramm*.

31. (1828) 108 E R 861 (862) : 6 L J (OS) K B 176, *Mullett v. Huchison*.

32. (1828) 108 E R 862 (862) : 6 L J (OS) K B 177, *Langdon v. Wilson*. (Letter addressed to plaintiff by defendant : "I have this day received a bill of exchange for £300 drawn by one P on T bearing my endorsement and the endorsement of B, which I

hold as your attorney to recover the value from the respective parties, or to make such other arrangement for your benefit as may appear to me, in my professional capacity, reasonable and proper"—Held, only an acknowledgment and no other agreement.) (1848) 136 E R 1107 (1108) : 5 C B 834 (835), *Notley v. Webb*. (An acknowledgment in these terms : "I hereby acknowledge that you have for my accommodation, accepted a bill of even date herewith for £25 payable, etc., and I agree to provide for the same when due."—Held, simply an acknowledgment.)

33. ('28) 15 AIR 1928 All 162 (163) : 50 All 504 : 118 Ind Cas 173 (FB), *In the matter of Shyam Sunder Lal*. (Document called *sarkhat* agreeing to pay interest properly signed and stamped at 8 annas as agreement credit and debit entries made below the signature—Document constitutes only one agreement and not several separate agreements in respect of each entry.)

S 5 NOTE 6

1. ('31) Beng S M Vol I, p. 18. (Citing Board of Revenue Resolution No. 3327 St., dated the 7th March 1934.)



stipulation on the part of the defendant not to convert another public house belonging to the defendant into a wine-vault under a penalty of £500. The deed was held not to contain distinct matters.<sup>2</sup>

**7. Lease-deeds.**—A covenant for renewal in a lease<sup>1</sup> or a covenant in a lease giving an option to the lessee to buy the property<sup>2</sup> is not a matter distinct from the lease. In a surrender of a lease for a term by an indenture in consideration of a certain amount and the grant of a new lease in favour of the same person at an increased rent, the agreement to grant a new lease is not a distinct matter.<sup>3</sup>

A covenant in a lease that the landlord should insure the premises and that the premia for the insurance should be added to the rent and be payable as rent by the lessee<sup>4</sup> or a covenant in a lease of tramways by the municipal corporation that the lessee should purchase all the electrical energy required for the purpose of running trams from the lessors<sup>5</sup> or an undertaking by a person other than a lessee to pay the rent,<sup>6</sup> is not a matter distinct from the lease.

Every lease implies an agreement to surrender at the end of the term by the lessee and where a deed expressly recites such a covenant, it does not become a distinct matter, even if the lessee agrees to pay a certain amount per year for the period of holding over.<sup>7</sup>

The mere fact that the concurrence of certain parties is required to effect a lease and is recorded in the document does not make an instrument which is otherwise a single contract of lease, a multifarious deed.<sup>8</sup>

Where, however, a deed of lease contains an agreement for sale of the fixtures, furniture and the stock-in-trade on the premises leased, the latter agreement does not relate to the subject-matter of the lease and is a "distinct matter."<sup>9</sup> Where a deed of *marupat*, i.e., a counterpart of a lease executed by a tenant also contained a provision whereby the arrears of rent were charged upon the improvements that might be effected by the tenant it was held that the deed was both a counterpart of a lease and a mortgage and should be stamped with the aggregate duty.<sup>10</sup> Similarly, an attested agreement in a lease whereby the lessee agrees to deliver to the lessor a certain quantity of grain on account of the balance of the previous year, amounts

2. (1815) 171 E R 420 (420): 1 Stark 119 (120), *Hughes v. King*.

NOTE 7

1. ('02) 25 Mad 3 (6, 7): 11 Mad L Jour 350 (FB), *Reference under Stamp Act. S. 57*. [See ('90) 17 Cal 548 (556), *A. C. Boyd v. A. Kreig*. (Lease with option to renew contained in correspondence between parties—Correspondence held liable to be stamped as a lease.)]

2. (1848) 136 E R 1027 (1031): 17 L J C P 117: 10 L T (OS) 415, *Worthington v. Warrington*.

3. (1839-40) 113 E R 616 (617): 11 Ad & E 796 (797) *Phillips v. Phillips*.

4. (1844) 152 E R 1253 (1254): 13 L J Ex 113: 2 L T (OS) 285: *Wilson v. Smith*.

5. (1902) 1 K B 441 (450, 451): 71 L J K B 92: 85 L T 663: 50 W R (Eng) 280, *British Electric Traction Co. v. Commissioners of Inland Revenue*.

Also see S. 2 (5) Note 12 and Art. 35 Note 4a.

6. (1831) 172 E R 822 (822): 4 C & P 554 (554), *Partt v. Thomas*.

(1831) 109 E R 1125 (1125): 36 R R 550, *Price v. Thomas*.

7. ('80) 1880 Bom P J 331 (FB), *Vithoji v. Tukaram*.

8. ('10) 37 Cal 629 (633): 6 Ind Cas 762, *In the matter of Parasea Collieries Ltd.*

9. (1811) 128 E R 151 (152): 3 Taunt 382 (382): *Corder v. Drakeford*.

(1826) 108 E R 16 (18): 5 B & C 41 (47), *Clayton v. Burtenshaw*.

10. ('18) 5 AIR 1918 Mad 504 (505): 41 Mad 469: 42 I. C. 943 (FB), *Govindan Namburdri v. Ottathayil Moidin*. (NOTE.—A Full Bench in a subsequent case reported in AIR 1920 Mad 225: 43 Mad 365 (FB), have held a contrary view in respect of a similar clause in a sale deed and have expressed that this case should not be followed in future cases.) Also see S. 2 (16) Note 31.



to a bond and is chargeable as a distinct matter apart from the lease.<sup>11</sup>

See also the undermentioned cases<sup>12</sup> in which the document in question was held to be a lease as well as a mortgage and as such governed by S. 6. (See also Note 7 on S. 6.)

**8. Several parties.**—Where several persons join in an instrument, their shares in the transaction constitute separate and distinct matters, unless there is a community of the subject-matter either in respect of property or interest in all the parties.<sup>1</sup> The following are some of the instances in which it was held that the instrument did not relate to “distinct matters” because of such community of subject-matter :

- (1) An agreement styled as one for sale of fish executed by 81 residents of the same village for raising a loan of Rs. 250 for a common purpose.<sup>2</sup>
- (2) An instrument whereby a person conveyed his tenant right in 20 bighas to three persons who purchased it in three equal shares.<sup>3</sup>
- (3) A bond jointly executed by two persons.<sup>4</sup>
- (4) An assignment of prize money of several seamen on a privateer payable out of a single fund.<sup>5</sup>
- (5) An agreement by several persons for a subscription to a common fund such as for making a wet dock.<sup>6</sup>
- (6) An agreement by six persons to give a musical performance jointly by all.
- (7) An agreement by several underwriters on one policy to refer a dispute as to that policy to arbitration.<sup>8</sup>
- (8) Release by two of next of kin to an administrator in respect of their interests in the goods of the deceased.<sup>9</sup>
- (9) Joint document in favour of one person executed by 37 persons authorising that person to receive certain sum of money on their behalf and to sign the refund bill—all of them being jointly interested in that fund.<sup>10</sup> Where, however the power-of-attorney signed by several persons in favour of one

11. ('05) 7 Bom L R 929 (931) (SB), *Ramchandra-Govindrav v. Dhondoo Raghu Chavan*.

12. ('82) 8 Cal 254 (259) : 10 Cal L R 33 (FB), *Ex parte, Hill*.

('95) 17 All 55 (57) : 1894 All W N 204 (FB), *Reference under Stamp Act I of 1879, S. 49*.

(1848) 136 E R 1407 (1422) : 18 L J C P 323 : 13 L T (OS) 209, *Walker v. Giles*.

('33) Mad S M p. 107, (Citing B P 243, 7th June 1895.)

#### Section 5—NOTE 8

1. Halsbury's *Laws of England*, Vol. 24, page 708, 709.

2. ('09) 2 Ind Cas 481 (484) (FB) (Mad), *Rodriguez v. Fernandez*.

3. ('40) Bihar S M p. 100. (Citing Board's Circular Order No. 10 of February 1909.) ('31) Beng S M Vol I p. 18. (Do.)

4. ('84) 1884 All W N 318 (319) (DB), *Wilaiti v. Pir Baksh*.

5. (1784) 104 E R 360n (361n) : 13 East 235 (n), *Baker v. Jardine*.

6. (1811) 104 E R 358 (360) : 13 East 232 (235), *Davis v. Williams*.

7. (1805) 127 E R 467 : 1 B & P (N R) 274 (278), *Bowen v. Ashley*.

8. (1815) 128 E R 999 (1000) : 6 Taunt 171 (174), *Goodson v. Forbes*.

9. (1841) 152 E R 30 (31) : 11 L J Ex 261, *Thomas v. Bird*.

10. ('86) 9 Mad 358 (359) (FB), *Reference under Stamp Act, S. 46*.

[See also ('92) 15 Mad 386 (389) (FB), *Reference under Stamp Act, S. 46*. (Ten mirasdars of a village executing an instrument authorising the person named therein to recover for them from their former agent the perquisites and other communal income pertaining to their mirashi rights, to cultivate their *maniams*, to distribute to them proportionately to their shares the profits of a certain common land, etc.—*Held*, the instrument was a power-of-attorney and should bear a single stamp of Rs. 5.)

(1828) 108 E R 1152 (1153) : 8 B & C 565 (567), *Allen v. Morrison*. (Single power-of-attorney executed by several members of a mutual insurance club, severally authorising the persons named therein to sign the club policies for them—*Held*, one stamp was sufficient.)]



man requires that man to act in relation to different subject-matters in none of which all of them have any common interest, the matters are distinct and the power-of-attorney requires as many stamps as there are executants.<sup>11</sup>

See also the undermentioned cases.<sup>12</sup>

In the instances given below the instruments executed by several persons were held to comprise several "distinct matters":

- (1) An agreement between a mining company and the owners of several pieces of land for the purpose of carrying out mining operations, executed by the several landholders, each interested only in the piece of land mentioned against his own name in the document.<sup>13</sup>
- (2) A single bond whereby sixteen different debtors bound themselves severally to pay the individual debt entered against the name of each in the bond.<sup>14</sup>
- (3) Agreement by several persons to sell their crop of hops then growing on the number of acres attached to their respective names, at the price mentioned in the agreement opposite to the name of each.<sup>15</sup>
- (4) One deed operating as four transfers and release in favour of four persons.<sup>16</sup>

In *Sunitabala Debi v. Dhara Sundari Debi*<sup>17</sup> it has been observed by their Lordships of the Privy Council that it is possible, though inconvenient to execute in one document a mortgage of one half of an entire property in favour of each of two independent mortgagees and thus to combine two independent mortgages in one deed.

The fact that the several executants come together and sign the document at the same place and time will not make an instrument which really covers several

11. ('92) 2 Mad L Jour 178 (180) (FB), *Reference under Stamp Act*, S. 46.

Also see Art. 48 Note 7.

12. (1906) 22 T L R 740 (741), *Reversionary Interest Society, Ltd. v. Inland Rev. Commrs.* (A statutory declaration for the purpose of carrying through a transaction was sworn to as to the whole of it by one person and as to part of it by another person—*Held*, the document constituted only one declaration.) (1814) 171 E R 26 (26): 4 Camp 80 (80), *Perry v. Bouchier*. (A joint release given to a captain of a ship and three other crews, captain's name coming first, having only one stamp.)

('95) 1895 Pun Re No. 102 page 483 (486, 487), *Musa v. Kahan*. (Promissory note comprising separately written undertakings by two promisors to pay debt in equal shares—One single document.)

(1845) 153 E R 570 (576): 14 L J Ex 345, *Hogarth v. Penny*. (Annuity deed—Grant of several annuities under one contract between the grantor and several annuitants—Stamp on sum total of all the annuities is sufficient.)

(1812) 104 E R 834 (837): 15 East 237 (243), *Cook v. Jones*. (Deed of annuity by three persons, one of whom was merely a surety for the other two—Annuity to be paid to two persons in certain proportion, one person being the agent of the other—*Held*, it was a single annuity and two stamps were not necessary.)

(1726) 92 E R 440 (441): 2 Stra 716, *Rex v.*

*Reeks*. (If a statute directs that there shall be a certain stamp upon every piece of vellum upon which any admission into a corporation shall be ingrossed, the admission of several persons cannot be ingrossed upon the same piece of vellum unless it has as many stamps as there are admissions.)

(1854) 139 E R 124 (132): 23 L J C P 57, *Doe d. Croft v. Tidbury*. (Deed of release by several persons in respect of separate pieces of lands encroached upon by them severally executed in favour of one person—*Held*, one single matter though the interests transferred were several.)

(1849) 4 Ex 193 (194): 154 E R 1179: 18 L J Ex 384: 80 R R 517, *Wills v. Bridge*. (An indenture whereby three persons jointly conveyed their separate interests in certain shares in an incorporated company does not require separate stamps but one *ad valorem* stamp is sufficient.)

13. (1900) 10 Mad L Jour 378 (381) (FB), *In re, Body Naikan and Best and Co.*

('01) 24 Mad 176 (185) (FB), *Reference under Stamp Act*, S. 57. (Agreement with numerous landholders for mining rights.)

14. ('86) 10 Bom 47 (49): 1885 Bom P J 126 (FB), *Shabudin v. Hirnak*.

15. (1804) 170 E R 779 (780): 5 Esp 182 (184), *Waddington v. Francis*.

16. (1871) 6 Ex 101 (106): 40 L J Ex 85: 24 L T 323: 19 W R (Eng) 591, *Freeman v. Commissioners of Inland Revenue*.

17. ('19) 6 AIR 1919 P C 24 (26): 46 Ind App 272: 47 Cal 175: 53 Ind Cas 131 (PC).



distinct matters one which does not do so. Similarly if the matter is single the fact of the several executants signing separately and writing separate endorsements reciting their liability will not multiply the duty.<sup>18</sup>

**9. Principal and surety.**—An instrument embodying a contract by the principal and his surety is an instrument which comprises two “distinct contracts” relating to the same transaction and not one relating to two “distinct matters” and therefore does not come within the provisions of this section.<sup>1</sup> The contract of surety is accessory to that of the principal and in respect of the same consideration. The leading object of the instrument is the contract by the principal and the stamp paid on that covers the contract by the surety.<sup>2</sup> Even if the contract by the principal and that of the surety are written and signed separately on the same paper, they may be parts of the same transaction and constitute a single instrument chargeable with one duty only.<sup>3</sup> Thus, where an instrument purporting to be a bond by A was written and signed by A which was followed by a contract of suretyship by B, written and signed by B separately on the same paper below A’s writing it was held that both these contracts constituted a single instrument of bond executed by A and B jointly and chargeable with one duty.<sup>4</sup>

By a bond, A as a principal and B as a surety jointly and severally bound themselves to pay to the creditors of one C a certain portion of C’s debts, and by the same bond, A bound himself to indemnify B, his surety, against all loss suffered by him by becoming his surety. It was held that one stamp as “a bond not otherwise provided for” was sufficient both in regard to the undertaking by A as well as that by B. Further, the agreement by A to indemnify B was not a “distinct matter” as it was the consideration for which B became surety for A’s performance of the contract.<sup>5</sup>

By a written contract, A agreed to take on lease a public house belonging to B at a certain rent. A also agreed to purchase all the beer to be used and sold in the public house from B or to pay a penalty of £30 per barrel purchased from any other person. A further agreed to quit on six months’ notice and to pay a penalty of £30

18. ('95) 1895 Pun Re No. 102 page 483 (486), *Musa v. Kahan*.

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1. ('95) 1895 Pun Re No. 102 page 483 (489) (DB), *Musa v. Kahan*.

2. ('80) 5 Bom 188 (193) : 1880 Bom P J 304 (FB), *Dowlat Ram v. Vithu Radhoji*. (A bond given by principal and surety.)

('81) 1881 Bom P J 305, *Kusa v. Sadashivpant*. (A mortgage bond executed by A in favour of B for Rs. 99—One C joined as a party as security for the due discharge of the conditions of the loan—*Held* bond should be stamped as a mortgage only. No separate stamp is necessary.)

('10) 1910 Pun Re No. 15 : 5 Ind Cas 813 (813) (FB), *In re, Stamp duty*. (An instrument of mortgage securing the repayment of a loan of Rs. 2,000, under which both the mortgagor and surety jointly and severally undertake liability in respect of the loan, and under which it would be competent to the creditor to claim the money from either the mortgagor or the surety, is correctly stamped, if it bears a ten-rupee stamp as a mortgage-deed.)

3. ('80) 5 Bom 188 (191) : 1880 Bom P J 304

(FB), *Dowlat Ram v. Vithu Radhoji*.

('93) 1893 Bom P J 533 (533) (FB), *Reference under Stamp Act, S. 46*.

4. ('80) 5 Bom 188 (191) : 1880 Bom P J 304 (FB), *Dowlat Ram v. Vithu Radhoji*.

('93) 1893 Bom P J 533 (533) (FB), *Reference under Stamp Act, S. 46*. (Agreement by a ferry contractor binding himself by certain conditions as regards levy of tolls, etc., and promising to pay certain amount by instalments—Below the agreement sureties endorsing a security bond—*Held*, following 5 Bom 188, the instrument was a single agreement chargeable with eight annas stamp only.)

('1823) 130 E R 79 (81) : 1 L J (OS) C P 52, *Stead v. Liddard*. (A entered into an agreement with B by a letter in which the consideration of the transaction was sufficiently made clear, B became party to the engagement by writing few lines at the bottom of the letter. By an endorsement on the back of the letter C became guarantee to B, referring to the terms of the agreement on the other side. In an action on the guarantee *held*, only one stamp was required on this paper as the whole formed one transaction.)

5. (1829) 109 E R 342 (344) : 8 L J (OS) K B 66, *Annandale v. Pattison*.



per month for holding over. One C agreed "to hold himself responsible for any amount of money which might become due from A to B." The agreement was signed by all namely A, B and C, and was stamped with one lease stamp. In an action by B against C on his guarantee it was held that the agreement by C was a distinct matter and an agreement stamp in addition to the lease stamp was necessary.<sup>6</sup>

An instrument which combines an agreement of service and a security bond is one relating to two distinct matters and is chargeable with stamp of Rs. 5-8-0 : annas 8 for the agreement and Rs. 5 for the security bond, under Arts. 5 (c) and 57, respectively.<sup>7</sup>

**10. Several properties.**—The question whether an instrument dealing with several properties comprises "distinct matters" or not has to be decided from the real nature of the deed and the intention of the parties as disclosed by it read as a whole.<sup>1</sup> Where an instrument indicates an intention of the parties to deal with all the properties comprised in the deed as a *single* unit for *one* consideration, the matter is only one and the instrument does not come under this section. The fact that the items of properties dealt with are of different *kinds*<sup>1a</sup> or that the value of the different items is separately mentioned<sup>1b</sup> does not necessarily show that the instrument relates to distinct matters.

Thus, where an instrument purported to transfer several items of immovable property i.e., a dwelling house and several pieces of land, for one consideration which consisted of the total of the prices mentioned against each individual item, it was held that the instrument amounted to a single conveyance and the stamp duty was leviable on the amount stated as consideration and was not the aggregate of duties charged on the price of each item.<sup>2</sup> Similarly, where an instrument conveying several items of movable and immovable properties and a share in certain leases, was in substance a sale of a share in a partnership, the interest in the leases being only a part of the partnership assets, it was held that the document did not consist of several distinct matters but was a single conveyance and an *ad valorem* stamp was payable on the amount shown as consideration.<sup>3</sup> See also the cases mentioned below.<sup>4</sup>

Where, however, the intention of the parties is to deal with each of the several items of properties comprised in the deed as a separate bargain with an independent consideration, the instrument which embodies all such bargains comprises so many distinct matters and is chargeable with the aggregate of duties leviable on each such bargain separately. Thus, an instrument operating as a conveyance of certain freehold property and good-will of a company, also transferred interests secured by nine leases, and it appeared from the deed that the parties intended to convey the

6. (1845) 7 Q B 474 (479) : 14 L J Q B 321 : 5 L T (OS) 171 : 115 E R 567 (569), *Wharton v. Walton*.

7. ('24) 11 AIR 1924 Nag 408 (409) : 78 Ind Cas 956, *Nilkanth v. Kesheorao*. Also see Art. 57 Note 5.

#### Section 5—NOTE 10

1. See ('96) 12 Cal 383 (386) (FB), *In re, Menglas Tea Estate*.

1a. ('33) 20 AIR 1933 All 321 (325, 329) : 55 All 468 : 143 Ind Cas 486 (FB), *Ram Sarup v. Joti*. (No distinction can be made from the point of view of interpreting S. 5 between actionable claims and other classes of property.)

1b. ('73) 10 Bom H C R 354 (355) (FB), *In re,*

*Tukaram Hari Atre*.

2. ('73) 10 Bom H C R 354 (355) (FB), *In re, Tukaram Hari Atre*.

3. ('96) 12 Cal 383 (388) (FB), *In re, Menglas Tea Estate*.

4. ('33) 20 AIR 1933 All 321 (329) : 55 All 468 : 143 Ind Cas 486 (FB), *Ram Swarup v. Joti*. (Sales of several bonds in one transaction under one sale-deed—Stamp duty of Rs 5 is sufficient.)

(1831) 131 E R 176 (176) : 7 Bing 456 (456), *Coster v. Cowling*. (Lease of house and land for £370 and by separate reservation £50 a year for furniture and fixtures—*Held*, if latter is accessory the stamp should be £4 i.e., on principal sum—If distinct, separate lease stamp should be affixed.)



freehold property and the good-will for one consideration and to transfer the interests in the leases for another consideration, it was held that the instrument related to distinct matters and as such was chargeable with an aggregate of duties under Arts. 21 and 60 of Sch. I of Act I of 1879.<sup>5</sup>

In the case of sale by auction of several properties by separate lots, the knocking down of each lot to a particular bidder constitutes a separate bargain and hence the memorandum of sale on which several lots are collectively shown as having been sold, requires as many agreement stamps as there are separate lots, even though the purchaser of all the lots is one and the same person.<sup>6</sup> But when (in the case of a Court or revenue auction) the matter proceeds to the further stage of granting sale certificates for the lots sold in auction, it was held under the Act of 1879 that the parties might intend to reduce the several lots to one transaction if the subject-matter admitted of it. Thus, where the subject-matter of the auction sale was different areas of land, the contiguous lands might merge into a single area and thus constitute a single subject-matter for one certificate of sale, while the areas which were not contiguous might form subjects of different sale certificates chargeable with so many duties.<sup>7</sup> But under Art. 18 in the present Act stamp duty is chargeable in respect of each property put up as a separate lot and sold.

In the case noted below<sup>8</sup> a house and a right to draw water from a well which was adjacent to the house were sold in auction in separate lots to one person. It was held under the Act of 1879 that a single certificate of sale could be given in respect of them as the right to draw water from the well was accessory to the house and thus formed a single matter. This decision would not be correct under the present Act.

In *Blount v. Pearman*<sup>9</sup> an instrument of lease contained a demise of two separate farms, with two habendums, differing from each other in duration, a reservation of two distinct rents and separate covenants some applying to one farm and some to the other. The lessee entered on the whole at the same time. It was contended that the lease required two stamps. Tindal C. J. holding that one stamp was sufficient observed as follows:—

“This appears to me to be, virtually and substantially, one transaction: There is one landlord and one tenant; the whole premises are demised together in one contract, at one and the same time. It is true, there are two rents reserved: one in respect of one part of the premises demised and another in respect of the other; and that the terms upon which these premises are granted differ. But I think we should be interfering with many transactions which are perfectly fair in the ordinary case of landlord and tenant, if we were to grant the

5. ('96) 23 Cal 283 (288) (FB), *Reference under Stamp Act, 1879, S. 46.*

6. ('83) 1883 Bom P J 277, *In re, Vithal*.  
(1809) 127 E R 989 (993): 2 Taunt 38 (47), *Emmerson v. Heelis*. (Sale of growing turnips by auction, no time being stipulated for removal—Sale is sale of interest in land—An agreement for sale of interest in land of the value of £20 requires a stamp—But if one person is declared to be the highest bidder in respect of several lots and all the lots of other exceed £20 in value, no stamp is required if the lots were separately of less value than £20 as a distinct contract arises for each lot.)

(1832) 110 E R 384 (385): 4 B & Ad 77 (78), *Roots v. Dormer* (Lord). (A memorandum signed by the bidder, stating that he agrees

to become the purchaser of the several lots set against his name does not require a stamp, though the aggregate exceed £20 in value, no single lot being of that price.)

('33) Mad S M p. 20. (Citing Lord Halsbury's *Laws of England*, Volume 24, page 709. If a purchaser at an auction purchases several lots and signs only one instrument in respect of them all, the separate purchases are none the less separate and distinct matters as to which the question whether any stamp is required must be separately determined.)

7. ('83) 1883 Bom P J 277, *In re, Vithal*. Also see Art. 18, Note 2.

8. ('83) 1883 Bom P J 333, *Narsidas v. Jivla*.

9. (1834) 131 E R 1175 (1175): 4 L J C P 149.



rule on that ground. It is no uncommon thing that different parts of premises should be entered upon at different periods of the year—the arable land at one time, the meadow and pasture ground at another, and the buildings at a third; and the habendum is to have and to hold the arable from such a time to such a time, and the meadow from such to such time. But unless the parties mean that these should be separate transactions, one stamp must be deemed sufficient.”<sup>9</sup>

An instrument of mortgage made certain properties chargeable for the debt in the first instance and further covenanted that in the event of the sale proceeds from those properties being found insufficient, the mortgagees would be entitled to proceed against certain other properties mentioned therein. It was held that the instrument did not comprise distinct matters but only distinct covenants in respect of the same subject-matter, namely, the repayment of the mortgage-debt and hence the instrument did not come within this section.<sup>10</sup>

**11. Stamp duty paid sufficient for one of the matters covered by the deed—Effect.**—Under this section, an instrument comprising several distinct matters has to be stamped with the aggregate amount of duties chargeable upon each of such matters. Where, however, an instrument which embodies two distinct matters is stamped with a duty sufficient to cover only one of such matters, a question arises whether the instrument is ‘duly stamped’ and whether it is admissible in evidence at least for the matter covered by the duty.

When a deed which is chargeable with an aggregate duty for two distinct matters is stamped with a duty for one of such matters only, it is clearly an instrument which is not ‘duly stamped’ within the meaning of S. 35 and would not be admissible in evidence *for any purpose*. It is evident, therefore, that S. 35 would bar its admission in evidence to prove the matter for which it is sufficiently stamped, unless the proper duty, i. e., duty to cover *both* the matters has been paid along with the necessary penalty.

It has, however, been observed by Peacock C. J., in the case noted below,<sup>1</sup> decided in 1869, that an instrument which contains several distinct contracts and as such requires several stamps, may be used as evidence of one contract for which it was stamped, although it would not be admissible as evidence in respect of the contract for which it was not stamped. The remark is only an *obiter* as there was no question in that case as to the admissibility of the document for want of stamps but for want of registration. It is doubtful whether the above remarks represent the correct law as it at present stands.

In the undermentioned cases<sup>2</sup> decided under the English law the documents in question related to several distinct matters, but a stamp covering one matter only was affixed to them, the other matters having been previously scored out. It was held that it was a matter of evidence to which contract the stamp applied and if the

9a. See ('33) Mad S M p. 105. (Citing, B P 3055, 29th October 1879—Three separate pieces of land were leased at different rates. One document is sufficient. Three are not necessary.)

10. ('28) 15 AIR 1928 Lah 370 (371): 108 Ind Cas 746 (DB), *Tej Ram v. Maqbal Shah*.

#### Section 5—NOTE 11

1. ('69) 4 Beng LR 18 (23): 12 Suth W R 11 (FB), *Lachmipat Singh (v. Mirza Khairat)*.

2. (1811) 104 ER 363 (365): 13 East 241 (246), *Doe d. Copley v. Day*.

(1842) 133 ER 1344 (1346): 11 LJ CP 87, *Evans v. Pratt*. (Unstamped paper bearing

two agreements—Second agreement performed—Agreement stamp fixed to the first agreement before a suit thereon—*Held*, agreement was properly stamped and the paper was admissible to prove the agreement.)

(1810) 104 ER 3 (5): 12 East 6 (11), *Powell v. Edmunds*. (Auction sale—Same paper containing two different contracts for the purchase of different lots by different persons—One stamp fixed on that part of the paper which contained the contract by the defendant—Other contract not stamped and scored out—The paper is admissible to prove the contract by the defendant.)



circumstances showed that the stamp was properly applied to the contract that was not crossed out, the document could be admitted in evidence to prove the contract. It was also held that if the document appeared to be properly stamped on the face of the deed for the contract which was not scored out, the document was presumed to be duly stamped and the onus of proving that it was not properly stamped by showing that the other contracts appearing on the document were scored out *after* the stamping of one contract lies on the party questioning the admissibility of the deed.<sup>3</sup>

In *Balaji v. Krishnaji*<sup>4</sup> which was decided under Act X of 1862, two debtors, A and B, took separate loans of Rs. 10 and Rs. 8 respectively from the same creditor C and executed a promissory note in favour of C on the same paper, the considerations being shown distinctly and separately against the name of each debtor. The liability of each debtor related to his own debt and was not joint. One D signed the pronote as a surety for both A and B. Two independent suits on the basis of the promissory note which was stamped with a two-anna stamp were brought against both the debtors and the surety. The promissory note was held to comprise two distinct matters and as such liable to two two-anna stamps and the question was referred to the High Court whether the stamp already borne by the document should be taken into account in making up the aggregate duty to which the note was liable. It was held by the High Court that the duty already paid could be taken into account in making up the deficiency.

See also Notes on S. 35.

12. Instrument covering several sheets.—See Note 6 on Section 4.

**\*6.** Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties :

Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

\*[1879—S. 7, para. 2 ; 1869—S. 14.]

## BENGAL

### Provincial Amendments.

(i) After the words and figure “in Schedule I” insert the words, figure and letter “or in Schedule IA, as the case may be.”—*Bengal Act III of 1922, S. 6 (1).* [1-4-1922.]

(ii) In the proviso, for the words “one rupee” substitute the words “two rupees.”—*Bengal Act XII of 1935, S. 4.* [1-6-1935.]

(iii) At the end of the proviso, add the words, figure and letter “unless it falls within the provisions of S. 6A.”—*Bengal Act III of 1922, S. 6 (2).* [1-4-1922.]

## BIHAR

(i) Same as that of Bengal (i).

(ii) In the proviso, after the words “one rupee” insert the words “and eight annas.”

(iii) Same as that of Bengal (iii).—*Bihar Act VI of 1937, S. 6.* [1-1-1938.]

3. (1804) 170 E R 779 (780): 5 Esp 182 | 4. ('69) 6 Bom H C R (AC) 95 (96) (DB).  
(184), *Waddington v. Francis*.



**BOMBAY**

In the proviso, for the words "one rupee" *substitute* the words "two rupees."  
—*Bombay Act II of 1932, Pt. IV, S. 15 (1).* [1-4-1932.]

**CENTRAL PROVINCES**

- (i) Same as that of Bengal (i).
- (ii) Same as that of Bihar (ii).
- (iii) Same as that of Bengal (iii)—*C. P. Act VI of 1939, S. 5.* [1-7-1939.]

**MADRAS**

- (i) Same as that of Bengal (i).—*Madras Act VI of 1922, S. 6.* [25-4-1922.]
- (ii) In the proviso, after the words "one rupee" *insert* the words "or three rupees as the case may be."—*Madras Acts VI of 1922, S. 6 and XVI of 1943, S. 4 (a)* [1-10-1943.]

**ORISSA**

- (i) Same as that of Bengal (i).
- (ii) Same as that of Bihar (ii).
- (iii) Same as that of Bengal (iii).—*Orissa Act VI of 1943, S. 6.* [26-4-1943.]

**PUNJAB**

- (i) For the words and figure "in Schedule I" *substitute* the words, figures and letter "given in Schedule I and Schedule IA."
- (ii) Same as that of Bihar (ii).
- (iii) Same as that of Bengal (iii).—*Punjab Act VIII of 1922, S. 6.* [15-1-1923.]

**SIND**

Same as that of Bombay.—*Sind Act I of 1938, S. 2.* [31-3-1938.]

**UNITED PROVINCES**

- (i) After the words and figure "in Schedule I" *insert* the words, figure and letter "or Schedule IA."—*U. P. Act III of 1936, S. 5.* [1-5-1936.]
- (ii) In the proviso for the words "one rupee and eight annas" *substitute* the words "one rupee and fourteen annas."—*U. P. Act XVII of 1948, S. 5 (2).* [1-4-1948.]
- (iii) Same as that of Bengal (iii).—*U. P. Act III of 1936, S. 5.* [1-5-1936.]

**Synopsis**

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| <ul style="list-style-type: none"> <li>1. Legislative changes.</li> <li>2. English law.</li> <li>3. Scope of the section.</li> <li>4. Right of election under S. 17, Negotiable Instruments Act, is not affected by this section.</li> </ul> | <ul style="list-style-type: none"> <li>5. Duty payable.</li> <li>6. Instrument capable of falling under specific and general description of instruments in schedule—Duty payable.</li> <li>7. Illustrative cases.</li> </ul> |
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1. **Legislative changes.**—This section corresponds to S. 7, Para II of the Act of 1879, and S. 14, Para I of 1869.

2. **English law.**—There is no express provision corresponding to this section in the English Stamp Act of 1891 (54 & 55 Vict., Ch. 39), or in the English Stamp Act of 1870 (33 & 34 Vict. Ch. 97.)

But the English practice is not different from the rule contained in this section. The general rule in England is also that an instrument which falls under two or more categories must be stamped with the highest duty with which it can be charged.<sup>1</sup>

3. **Scope of the section.**—This section provides for an instrument which though relating substantially to *one matter*, answers to two or more descriptions in the first

**Section 6—NOTE 2**

1. See Halsbury's *Laws of England*, Vol. XXIV, pages 710, 711.



schedule,<sup>1</sup> and enacts that in such a case, the instrument is chargeable with the highest duty that may be applicable. Thus, this section will not apply to an instrument relating to two or more distinct matters. Such an instrument will come under S. 5,<sup>2</sup> and be chargeable with the aggregate of the duties that would have been payable if a separate instrument in respect of each matter had been executed.

In order to bring a document within the terms of this section, the document must be read as a whole and it must be seen whether when so read, the instrument falls within two or more articles.<sup>3</sup>

Where an instrument dealing with one matter contains several provisions which taken separately will constitute different kinds of instruments falling under different articles in the schedule, the document cannot be necessarily considered as falling under this section. If all the provisions are merely *incidental* to a main transaction which is recorded in the document, the document will fall only under one description, namely, that of the main transaction. Thus, a lease-deed cannot be treated as a lease as well as a bond merely because it contains a covenant for rent. But where a provision is not necessary for the completion of the main transaction and is of a collateral nature though the matter dealt with is not *distinct* from the rest of the instrument, this section will apply. Thus, where a lease contains a *mortgage* by the lessee to secure the payment of rent under the lease, the deed will include both a mortgage and a lease and yet will not be one dealing with several distinct matters. To such a case this section will apply. See Note 12 on Section 2 (5).

**4. Right of election under S. 17, Negotiable Instruments Act, is not affected by this section.**—Where an instrument may be construed as a promissory note or a bill of exchange, under S. 17 of the Negotiable Instruments Act, 1881, the holder may, at his election, treat it as either. This right of election is not taken away by anything contained in this Act. Thus, if the holder elects to treat it as a bill of exchange, it must be treated as such for purposes of stamp also and it will be chargeable as a bill of exchange.

In *Alagappa Chetti v. Narayan Chettiar*,<sup>1</sup> the holder elected to treat it as a bill of exchange and as a bill of exchange, the instrument was duly stamped. It was, however, contended that the right of election under S. 17 of the Negotiable Instruments Act, only applied for purposes of that Act and that for purposes of this Act, the higher duty must be paid under this section. Rejecting this contention, Sundaram Chetti, J. observed :

“This contention, if approved, would deprive the holder of the benefit conferred upon him by S. 17. The right of election given to him is a privilege which he must have the full advantage of, and that benefit should not be taken away by anything contained in the Stamp Act. It would be reasonable to read S. 17 of the Negotiable Instruments Act as a proviso to S. 6 of the Stamp Act.”

**5. Duty payable.**—As has already been seen in Note 3, whenever an instrument relating to one matter falls within two or more descriptions in Schedule I, it is chargeable, under this section, with the highest duty. Thus, an instrument cannot be

#### Section 6—NOTE 3

1. ('82) 8 Cal 254 (259) : 10 Cal L R 33 (FB),  
Reference under Stamp Act, S. 46.
2. ('82) 8 Cal 254 (259) : 10 Cal L R 33 (FB),  
Reference under Stamp Act, S. 46.
3. ('17) 4 AIR 1917 Mad 14 (20) : 37 Ind

Cas 984 (DB), *Ramaswami v. Ghanamani*.

#### Section 6—NOTE 4

1. ('32) 19 AIR 1932 Mad 765 (766) : 140  
Ind Cas 315 .
- Also see S. 2 (2) and (3) Note 4.



regarded as duly stamped because it is stamped with the duty appropriate to one category within which it falls, if upon another view of its operation it falls within another category on which a higher duty is charged.<sup>1</sup> For instance, where a dissolution of partnership is carried out by a document which in form also effects a partition between the partners, the instrument is not duly stamped as a dissolution of partnership if as a partition deed it is chargeable with a higher duty.<sup>2</sup>

Nor does an exemption granted in respect of certain instruments charged in one category of the schedule necessarily protect that instrument falling within that exemption if it also falls within another category of instruments charged.<sup>3</sup>

It has been held that where the instrument is stamped with a lesser duty appropriate to one category, under which it falls, the party may abandon his rights arising under the other description for which a higher duty is chargeable and confine his claim to the matter which falls under that category for which the stamp duty is sufficient.<sup>4</sup> It is submitted that this view is not correct as, under S. 35, an instrument is to be taken as whole. (See S. 35 Notes 7 and 8.)

**6. Instrument capable of falling under specific and general description of instruments in schedule—Duty payable.**—Where an instrument falls under a well defined class of instruments in the schedule and is also capable of falling under another category which is wide enough to include such instrument within its scope, can the instrument be said to come within two descriptions in Schedule I? No. The instrument cannot be said to fall both under the general and specific categories. It only comes under the specific and well defined class of instruments. The reason is, where the Legislature has imposed a particular rate of duty on a specific and well defined class of instruments, it is to be inferred that the intention was that that duty and no other, should be charged on all ordinary instruments of that class, even though there may be another description wide enough to include it.<sup>1</sup> This section, therefore, will not apply to such cases and the instrument must be stamped as belonging to the specific category. Thus, in *Prudential Insurance Co. v. Inland Revenue Commissioners*<sup>2</sup> the instrument in question was held to be chargeable as a policy of life insurance. It was not even argued that the instrument ought to be charged as a “bond or covenant” although it undoubtedly fell within that description.<sup>3</sup>

## 7. Illustrative cases.

Mortgage as well as lease.

(a) By an instrument A, a debtor, leased certain mouzas to his creditor B, for a term of 20 years. It was provided that from the rent of each year a portion should be deducted in payment of A's debt to B, so that the whole debt should be paid by the end of the term of the lease. The instrument also contained the usual clauses in

### Section 6—NOTE 5

1. Halsbury's *Laws of England*, Vol. XXIV, page 710.

2. ('37) 24 AIR 1937 Mad 308 (309): I L R (1937) Mad 553: 167 Ind Cas 439 (S B), *Board of Revenue v. Alagappa*.

Also see S. 2 (15) Note 11 and Art. 46 Note 3.

3. Halsbury's *Laws of England*, Vol. XXIV, pages 710, 711.

4. ('80) 4 Bom 19 (20): 4 Ind Jur 413 (FB), *Chimnaji v. Ranu*. (Instrument partly

an agreement and partly a bond—Instrument stamped as bond—*Held* deed was insufficiently stamped, as it required stamp for agreement, that being the higher duty—But as promisee abandoned the agreement, he was entitled to recover on the bond.)

### Section 6—NOTE 6

1. Halsbury's *Laws of England*, Vol. XXIV, page 711 (FN).

2. (1904) 2 K B 658 (665): 73 L J K B 734: 91 L T 520: 53 W R (Eng) 108.

3. See Halsbury's *Laws of England*, Vol. XXIV, page 711 (FN).



pattas. It was held that the instrument was partly a lease and partly a usufructuary mortgage and should be stamped as a mortgage only under S. 7, para. 2 of the Act of 1879 (corresponding to this section), that being the higher duty.<sup>1</sup>

(b) A leased certain land to B at a rent of Rs. 365 per annum in cash and of certain cart-loads of straw and grass by a document which also contained an agreement by B hypothecating certain other property belonging to him for securing the payment of the rent and for the performance of the engagement for the delivery of the articles. It was held that the instrument could not be regarded as relating to distinct matters. But S. 7, para. 2 of the Act of 1879 (corresponding to this section) applied and the deed be stamped as a mortgage.<sup>2</sup>

(c) A certain property was usufructuarily mortgaged by B to A on condition that the "othi" right was to be for a period of two years. Instead of actually taking possession, A granted a lease of the same to B on a fixed annual rent, rent being payable up to the time of redemption of the "othi." There was a collateral agreement in the lease-deed by way of mortgage under which the property was offered as security for the payment of rent. It was held that the usufructuary mortgage and lease were parts of the same transaction and, therefore, required a stamp as a mortgage.<sup>3</sup>

**Mortgage as well as declaration of trust.**

(d) An instrument by which the executant made a declaration of trust in favour of a certain bank in consideration of advances of money to be made for carrying on business, authorizing the bank to recover the advances and interest by using, selling, exchanging or otherwise dealing with the property, was held to be a declaration of trust as well as a mortgage and, for purposes of stamp duty, liable to be stamped as a mortgage.<sup>4</sup>

**Mortgage as well as bond.**

(e) A grower of sugarcane borrowed a certain sum and covenanted to deliver to the lender unrefined sugar at a certain agreed rate. In case of not supplying the sugar, the borrower was to pay the whole amount at once. As a collateral security the borrower hypothecated his sugarcane crop. It was held in the undermentioned case decided under the Act of 1879 that the instrument was a bond as well as a mortgage-deed.<sup>5</sup>

**Mortgage as well as sale-deed.**

(f) A sale-deed in which the vendor mortgaged the lands not included in the sale as security for the due performance of his covenants was held not to be an instrument comprising or relating to "distinct matters," and so, need not be stamped

#### Section 6—NOTE 7

1. ('82) 8 Cal 254 (259) : 10 Cal L R 33 (FB), *Reference under Stamp Act*, S. 46. (Instrument did not relate to two or more "distinct" matters within S. 7 para I of Act of 1879 corresponding to present S. 5.)

Also see S. 2 (16) Note 8.

2. ('95) 17 All 55 (57) : 1894 All W N 204 (FB), *Reference under Stamp Act*, S. 49.

[See also ('33) Mad S M p. 21. (Citing B. P. 4-R., Mis., 3rd January 1920—Lease containing mortgage held to be correctly stamped with a higher duty as a lease.)]

Also see S. 2 (16) Note 8 and S. 2 (17) Note 9.

3. ('34) 21 AIR 1934 Mad 458 (459) : 58 Mad

75 : 155 Ind Cas 838 (DB), *Gnanadesikam Pillai v. Antony Benathu Boopalarayar*.

4. ('16) 3 AIR 1916 Mad 374 (376) : 38 Mad 646 : 21 Ind Cas 876 (FB), *Secretary of Commissioner of Salt, Abkari and separate Revenue, Madras v. Mrs. E. W. Arrand, Bank of Madras*.

Also see S. 2 (17) Note 19 and Art. 64 Note 2.

5. ('87) 9 All 585 (589-590, 591) : 1887 All W N 190 (FB), *In the matter of Gajraj Singh*. (Per Stuart C. J. and Straight and Brodhurst JJ.)

[See also ('36) 23 A I R 1936 All 481 (482, 483) : 58 All 1083 : 163 Ind Cas 614 (SB), *In re Board of Revenue*.]



both as a sale and a mortgage.<sup>6</sup> The deed being stamped as a sale-deed, the question whether it fell under two descriptions was not gone into, the duty chargeable for sale being higher than for mortgage.

**Marketable security as well as promissory note.**

(g) The Mexican Government issued "gold coupon treasury notes" with a promise to pay principal and interest to the bearer at fixed dates either abroad or in London and other Stock Exchanges. It was held that the notes were both promissory notes and marketable securities and were not chargeable with duty merely as promissory notes.<sup>7</sup>

(h) A foreign Railway Company, as security for a loan, handed through their Agent to the lender, an instrument which stated that for value received, they promised to pay twelve months after date the amount named in it. It also contained a statement that it was one of a series and was secured by a deposit of gold bonds, which were under an existing trust-deed to be held in trust for the benefit of the holders of the instruments. It was held that the instrument was a promissory note as well as a marketable security and was not chargeable with duty merely as a promissory note.<sup>8</sup>

(i) An instrument issued by a company, purporting on the face of it to be a "debenture" with coupons for the payment of interest, attached to it, and containing an engagement on the part of the company to pay "the amount of this indenture" to A B or order, was held to be a debenture and not a promissory note.<sup>9</sup>

See also the undermentioned case<sup>9a</sup> where the instrument was held to be a marketable security and not a mere stock certificate.

**Agreement as well as bond.**

(j) The instrument in question ran as follows: "We (defendants) promise to repay the sum of.....borrowed from you (plaintiff) in the month of Phalgun of this year. In addition we promise to pay 9 pails of nagli in the month of Phalgun of this year." It was held under the Act of 1869, that the instrument operated as a bond as well as an agreement and required stamp as an agreement which was liable to a higher rate of duty than a bond.<sup>10</sup>

(k) The instrument in question recited that N M being desirous of obtaining from Government the monopoly of the right to manufacture and sell spirits for three years, had applied to the Government for the same and the Government had agreed to grant monopoly in consideration of a certain annual payment. It also contained a penalty clause in case of any breach. It was held that the main clauses of the instrument operated as an agreement and the penalty clause operated as a bond.<sup>11</sup>

6. ('20) 7 AIR 1920 Mad 225 (225): 43 Mad 365: 56 Ind Cas 154 (FB), *In re Secretary to the Commissioner of Salt, Abkari and separate Revenue, Madras*. (AIR 1918 Mad 504: 41 Mad 469 overruled.)

[See also ('33) Mad S M p. 21 (Citing B. P. Mis. 145, 14th May 1932; B. P. 45, Press, 27th April 1940—A sale-deed for Rs. 4,000 contained a clause whereby the vendor hypothecated specific immovable properties as security to the extent of Rs. 15,000 to indemnify the vendee against any loss on account of adverse claims that might be set up by others. The Board held that the document was both a "conveyance" and a "mortgage" and was chargeable under section 6 with the higher of the two stamp duties as a mortgage for Rs. 15,000.)]

Also see S. 2 (5) Note 13, S. 2 (17) Note 22, S. 5 Note 5, and Art. 15 Note 6.

7. (1908) 1908 App Cas 92 (96): 77 L J K B 302: 98 L T 286, *Speyer Brothers v. Commrs. In. Rev.*

8. (1895) 2 Q B 598 (603): 64 L J M C 241: 73 L T 377, *Brown Shipley & Co. v. Commrs. In. Rev. (Brown Shipley & Co. v. Commissioners Inland Revenue, (1895) 2 Q B 240, reversed.)*

9. (1881) 7 Q B D 165 (173, 174): 50 L J Q B 517: 44 L T 378: 29 W R (Eng) 610, *British Indian Steam Navigation, Co. v. Commissioners of Inland Revenue*.

Also see S. 2 (22), Note 14 and Art. 27 Note 1.

9a. (1900) 83 L T 714 (716): 17 T L R 99, *Noakes v. Inland Revenue Commissioners*.

10. ('80) 4 Bom 19 (20): 4 Ind Jur 43 (FB), *Chimnaji v. Ranu*.

11. ('80) 2 All 654 (663): 5 Ind Jur 264 (FB), *Reference by the Board of Revenue, N.W. P. under Act I of 1879*. (Per Full Bench; Stuart C. J. dissenting.)



The correctness of the view that the penalty clause operated as a bond, was doubted by Stuart C. J. and Straight J. in *In re Gajraj Singh*.<sup>11a</sup>

(l) The instrument which was attested ran as follows: "I covenant to supply 250 maunds of sugarcane to the factory at the rate prescribed by the Government. The entire cost of the supply of sugarcane shall be borne by me." It was held that the instrument was not a bond, but only an agreement.<sup>12</sup> Compare Illustration (e).  
Dissolution of partnership as well as partition.

(m) A document, which while carrying out the dissolution of a partnership, also effected a partition between the partners, was held to be a deed of dissolution of partnership as well as a partition-deed.<sup>13</sup>

Dissolution of partnership and conveyance.

(n) Where a dissolution of partnership was carried out by an instrument which in form effected an assignment of one partner's share to another partner, the document was held chargeable as a "conveyance" under the English Stamp Act, 13 & 14 Vict. c. 97.<sup>14</sup>

Contract notes and clause for submission to arbitration.

(o) Certain contract notes comprising intimation of sale of goods and also containing an arbitration clause in case of any dispute, was held to require stamp only as contract notes. The submission clause did not require any stamp as it was part of the contract itself.<sup>15</sup>

Lease as well as agreement.

(p) Under a deed B covenanted that he would take certain premises from A, make certain alterations in the premises at his own cost, and pay Rs. 9 as rent. It was held that the deed was an agreement as well as a lease and the duty for the lease being higher, it would be chargeable only as a lease.<sup>16</sup>

Acknowledgment and release.

(q) In the undermentioned case<sup>17</sup> the document containing an acknowledgment by a principal upon a settlement of accounts that a certain amount was due by him to the agent and also a release, was held by Abdur Rahim Offg. C. J., to relate to two "distinct matters" within the meaning of S. 5. Phillips J., however, was of the opinion that the two matters were not distinct and the document operated only as an acknowledgment.

Acknowledgment as well as agreement.

(r) An acknowledgment containing also a promise to pay was held both an acknowledgment as well as an agreement. It was chargeable with the higher duty under Art. 5 (c).<sup>18</sup> It is submitted that such an instrument is not an acknowledgment of a debt within Art. 1 at all.

11a. ('87) 9 All 585 (590) (FB.)

12. ('36) 23 AIR 1936 All 481 (485): 58 All 1083: 163 Ind Cas 614 (SB), *In re Board of Revenue*.

13. ('37) 24 AIR 1937 Mad 308 (309, 310): 1 LR (1937) Mad 553: 167 Ind Cas 439 (SB), *Board of Revenue, Madras v. Allagappa Chettiar*.

[See also ('01) 3 Bom LR 132 (133) (FB), *Choturam v. Ganesh*.]

14. (1867) 15 LT (NS) 282 (283-284): 15 WR (Eng) 258: 2 Ex 46: 36 LJ Ex 11, *Christie, Commrs. of Inland Revenue*.

(1867) 16 LT 839 (840-841): 2 Ex 399: 36 LJ Ex 199, *Philips v. Commrs. of Inland Revenue*. [(1867) 15 LT (NS) 282 followed.]

15. ('13) 40 Cal 219 (229): 18 I. C. 978 (DB),

*Bajinath v. Ahmed Musaji*. (Reversing 1 Ind Cas 371.)

(12) 39 Cal 669 (677, 678): 16 I. C. 153 (155, 156), *Bombay Company Ltd. v. National Jute Mills, Co. Ltd.*

Also see S. 5 Note 5, Art. 5 Note 10 and Art. 43 Note 3.

16. ('39) 26 AIR 1939 All 724 (725): 185 Ind Cas 391 (DB), *Shaban Ali v. Mohammad Ishaq*.

Also see S. 2 (16) Note 26.

17. ('17) 4 AIR 1917 Mad 14 (16, 17, 20): 37 I. C. 984 (DB), *Ramaswamy Aiyar v. Ghanamani Nachiar*.

Also see S. 5, Note 5.

18. ('38) 25 AIR 1938 Nag 464 (464): 177 Ind Cas 889, *Narbada Prasad v. Mt. Sunki*.



Conveyance as well as declaration of trust.

(s) The share-holders of X company, which was in the course of being wound up, entered into an agreement in writing with Y company, whereby it was agreed that the share-holders of X company should respectively exchange their shares in X company for shares in Y company, and that upon the Y company allotting to them the shares to which they were respectively entitled, they should themselves hold their respective shares in X company in trust for Y company. It was held that the instrument amounted to a declaration of trust as well as to a conveyance.<sup>19</sup>

(t) For other illustrations, see the undermentioned cases.<sup>20</sup>

### Provincial Amendments.

#### Section 6A.

##### BENGAL

After S. 6 of the main Act the following shall be *inserted* namely :—

*Payment of Bengal stamp duty on copies, counterparts or duplicates when that duty has not been paid on the principal or original instrument.*

“6-A. (1) Notwithstanding anything contained in S. 4 or 6 in any other law unless it is proved that the duty chargeable under the Bengal Stamp (Amendment) Act, 1922, or the Indian Stamp (Bengal Amendment) Act, 1935, has been paid—

(a) on the principal or original instrument as the case may be, or

(b) in accordance with the provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in Bengal, have been chargeable under the Bengal Stamp (Amendment) Act, 1922, or the Indian Stamp (Bengal Amendment) Act, 1935, with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under S. 19A.

(2) Notwithstanding anything contained in any law, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon :

Provided that a Court before which any such instrument, counterpart, duplicate, or copy is produced, may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence.”

—*Bengal Acts III of 1922, S. 7 [1-4-1922] and XII of 1935, S. 7. [1-6-1935.]*

##### BIHAR

Same as that of Bengal, except the following : For the short titles of the Bengal Acts *substitute* the short title “the Bihar Stamp (Amendment) Act, 1937,” and for the word “Bengal” *substitute* the word “Bihar”.—*Bihar Act VI of 1937, S. 7. [1-1-1938.]*

19. (1899) 2 Q B 7 (13) : 68 L J Q B 204 : 78 L T 559 : 47 W R (Eng) 320, *Chesterfield Brewery Co. v. Commissioners of Inland Revenue*.

[See also (1898) 1 Q B 226 (240), *West London Syndicate v. Commissioners of Inland Revenue*.]

20. (1916) 3 A I R 1916 Cal 838 (840) : 33 I. C. 247, *Assaram v. Keshrichand*. (Instrument held a promissory note as well as a bond.)

NOTE.—For criticism of this case, see AIR 1928 Cal 556 : 56 Cal 233 (SB).

(1933) 20 A I R 1933 Nag 391 (391) : 147 Ind

Cas 981, *Govinda v. Haribhan*. (Instrument was held to operate only as a pronote and not as a bond.)

(1919) 6 A I R 1919 Mad 322 (324, 329) : 41 Mad 959 : 49 Ind Cas 291 (DB), *Meenakshisundara Mudaliar v. Rathnasami Pillai*. (Per Seshagiri Aiyar J : Agreement to lease and agreement to mortgage.)

(1862) 176 E R 144 (144), 3 F and F 320 (321), *Batson v. France*. (A receipt for money stating that it was to be repaid on a certain event, held also an agreement and required a stamp as such.)



## CENTRAL PROVINCES

After S. 6 of the main Act, the following section shall be deemed to be inserted namely :

“6A. (1) Notwithstanding anything contained in S. 4 or S. 6 or in any other enactment for the time being in force the duty chargeable on *Payment of duty on copies, counterparts or duplicates, when that duty has not been paid on the principal or original instrument.* an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in the Central Provinces and Berar, have been chargeable under this Act, as amended by the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939, with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under S. 19A, unless it is proved that the duty chargeable under this Act, as amended by the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939, has been paid.

- (a) on the principal or original instrument, as the case may be, or
- (b) in accordance with the provisions of this section.

(2) Notwithstanding anything contained in any enactment for the time being in force, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon.

Provided that a Court before which any such instrument, duplicate or copy is produced may permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence.—*C. P. Act VI of 1939, S. 6. [1-7-1939.]*

## ORISSA

Same as that of Bengal, except the following : For the short titles of the Bengal Acts *substitute* the short title “the Orissa Stamp (Amendment) Act, 1943,” and for the word “Bengal” *substitute* the words “the Province of Orissa.”

—*Orissa Act VI of 1943, S. 7. [26-4-1943.]*

## PUNJAB

Same as that of Bengal, except the following :

(i) In sub-s. (1).

(a) for the short titles of the Bengal Acts *substitute* the short title “the Indian Stamp (Punjab Amendment) Act, 1922,” and

(b) for the word “Bengal” *substitute* the words “the Punjab.”

(ii) In sub-s. (2).

(a) for the words “in any law” *substitute* the words “in S. 35, or in any other law”;

(b) in the proviso, for the word “may” wherever it occurs *substitute* the word “shall” and *omit* the words “in its discretion” after the word “may” where it first occurs.—*Punjab Act VIII of 1922, S. 8. [15-1-1923.]*

## UNITED PROVINCES

Same as that of Bengal, except the following :

In sub-s. (1),

(a) for the short titles of the Bengal Acts *substitute* the short title “the United Provinces Stamp (Amendment) Act, 1948;”—*U. P. Act XVII of 1948, S. 6. [1-4-1948.]*



(b) for the words "the duty chargeable on an instrument of sale" *substitute* the words "the duty chargeable on any of the several instruments employed for completing a transaction of sale"; and

(c) for the word "Bengal" *substitute* the words "the United Provinces."  
—U. P. Act III of 1936, S. 6. [31-3-1936.]

\*7. (1) No contract for sea-insurance (other than such insurance as is referred to in section 506 of the Merchant Shipping Act, 1894), shall be valid unless the same is expressed in a sea-policy.

(2) No sea-policy made for time shall be made for any time exceeding twelve months.

(3) No sea-policy shall be valid unless it specifies the particular risk or adventure, or the time, for which it is made, the names of the subscribers or under-writers, and the amount or amounts insured.

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

#### Synopsis.

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|---|---|
| <ol style="list-style-type: none"> <li>1. Legislative changes.</li> <li>1a. English law.</li> <li>2. Scope and effect of sub-s. (1).</li> <li>3. Contract of sea-insurance—Illustrative cases.</li> </ol> | <ol style="list-style-type: none"> <li>4. Time policy—Sub-section (2).</li> <li>5. Sub-section (3)—Requirements of a sea-policy.</li> <li>6. Protection note if can be validated on payment of stamp duty.</li> </ol> |
|---|---|

1. **Legislative changes.**—In the Stamp Act I of 1879 originally there was no provision corresponding to this section. By S. 2 of Act VI of 1894, S. 7A which corresponded to this section was added to the Stamp Act of 1879. The present section merely reproduces S. 7A of Act I of 1879 without any alterations.

1a. **English law.**—The relevant provisions of English law are as follows :

(a) Stamp Act, 1891 (54 and 55 Vict., Ch. 39), Ss. 93 and 94—

"93. (1) A contract for sea insurance (other than such insurance as is referred to in the fifty-fifth section of the Merchant Shipping Act Amendment Act 1862) shall not be valid unless the same is expressed in a policy of sea insurance.

(2) No policy of sea insurance made for time shall be made for any time exceeding twelve months.

(3) A policy of sea insurance shall not be valid unless it specifies the particular risk or adventure, the names of the subscribers or underwriters, and the sum or sums insured, and is made for a period not exceeding twelve months.

94. Where any sea insurance is made for a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at

\*[1879—S. 7A. Cf. (1891) 54 & 55 Vict., C. 39—Ss. 93, 94.]



her destination, and been there moored at anchor, the policy is to be charged with duty as a policy for a voyage and also with duty as a policy for time."

(b) The Marine Insurance Act, 1906 (6 Edw. VII, Ch. 41), Ss. 22, 23 and S. 25 (2)—

"22. Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

23. A marine policy must specify :

- (1) The name of the assured, or of some person who effects the insurance on his behalf :
- (2) The subject-matter insured and the risk insured against :
- (3) The voyage or period of time, or both, as the case may be, covered by the insurance :
- (4) The sum or sums insured :
- (5) The name or names of insurers.

25. (2). Subject to the provisions of section eleven of the Finance Act, 1901, a time policy which is made for any time exceeding twelve months is invalid."

2. **Scope and effect of sub-section (1).**—This sub-section provides that (except in certain cases) a contract of sea-insurance is void unless it is expressed in a sea-policy. Hence, an *oral* contract for sea-insurance is not enforceable.

Before the introduction of S. 7A in Act I of 1879, corresponding to this section, a suit on an oral contract of sea-insurance was maintainable.<sup>1</sup> That section (S. 7A of Act I of 1879) was introduced to bring the provisions of the Indian Stamp Act into conformity with the English law. In England it was well settled that a contract of sea-insurance to be valid must be contained in a sea-policy.<sup>2</sup> The section contains a substantive provision of law. By virtue of the provisions of this section a suit on an oral contract of sea-insurance does not lie. The section is prohibitory and the Court is bound to dismiss such a suit even though the section is not pleaded as a defence to the suit.<sup>3</sup> It is the duty of the Judge to raise and take note of the stamp objection even though the parties may choose to waive it.<sup>4</sup>

In *Surajmull v. Triton Insurance Co. Ltd.*,<sup>5</sup> the plaintiffs sued to recover damages for a breach of an oral contract to issue a policy of sea-insurance. This section was not pleaded as a defence in the Courts in India and the point was raised for the first time before their Lordships of the Privy Council. Their Lordships of the Privy Council observed :

"The suggestion may be at once dismissed that it is too late now to raise the section (S. 7) as an answer to the claim. No Court can enforce as valid, that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a Court can be dispensed by the consent of the parties or by a failure to plead or argue the point at the outset. The

#### Section 7—NOTE 2

1. (1889) 14 App Cas 83 (93), *Bhagwandass v. Netherlands etc., Insurance Co.* (Suit for issue of policy.)

2. (1867) 2 H L 296 (314) : 36 L J C P 313 : 16 L T 800 : 16 W R (Eng) 38, *Xeons v. Wickham*.

3. ('25) 12 A I R 1925 P C 83 (84) : 52 Ind App 126 : 52 Cal 408 : 86 Ind Cas 545 (PC),

*Surajmull Nagoremull v. Triton Insurance Co. Ltd.*

4. (1867) 2 Ex 338 (339, 340) : 36 L J Ex 180 : 16 L T 568 : 15 W R (Eng) 964, *Nixon v. Albion Marine Insurance Co.*

(1902) 2 K B 384 (394) : 71 L J K B 739 : 87 L T 356 : 50 (W R) (Eng) 694, *Royal Exchange Assurance Corporation v. S. A. Vega*.

5. ('25) 12 A I R 1925 P C 83 (84) : 52 Ind App 126 : 52 Cal 408 : 86 Ind Cas 545 (PC).



enactment is prohibitory. It is not confined to affording a party a protection of which he may avail himself or not as he pleases. It is not framed solely for the protection of the revenue and to be enforced solely at the instance of the revenue officials nor is the prohibition limited to cases, for which a penalty is exigible. The expression of an agreement of sea-insurance, otherwise than in a policy, is a thing forbidden in the public interest and the statutory insistence on a policy is no mere collateral requirement or prescription of the proper way of making such an agreement. To allow the suit to proceed in defiance of S. 7 would defeat the provisions of the law laid down therein. In England this is well settled law and there is no ground for construing the Indian Act, expressed in almost identical terms, in any different way."

The above decision shows that in the absence of a *policy* of sea-insurance a person can have *no* remedy in regard to a contract for sea-insurance and that he cannot even sue for the issue of a policy or for damages for breach of contract in not issuing a policy.<sup>6</sup>

As to the meaning of a "sea-policy," see Note 2 on S. 2 (20).

As to whether a letter of cover can be treated as a sea-policy, see Note 6 and S. 2 (20), Note 2.

The section does not apply to the insurance referred to in S. 506 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60). That section runs as follows :

"An insurance effected against the happening, without the owner's actual fault or privity, of any or all of the events in respect of which the liability of owners is limited under this Part of this Act shall not be invalid by reason of the nature of the risk."

Where by its bill of lading an inland navigation company for an additional freight took upon itself all risks attending the goods while on board the vessel, it was held that the agreement was a contract of sea-insurance.<sup>7</sup> Such a contract is saved by S. 506 of the Merchant Shipping Act, 1894, and is not invalid though not expressed in a sea-policy.

See Note 2 on S. 2 (20).

### 3. Contract of sea-insurance—Illustrative cases.

(1) A by means of an open cover reinsured with B. When the policy was tendered to him B refused to sign contending that A had not made all the necessary declarations. It was then verbally agreed between A and B that a third person should be appointed to investigate and if he certified that A had made all the necessary declarations, B should pay the loss. The third person appointed certified that A had made the necessary declarations. B still refused to pay. A filed a suit to recover the amount as damages for breach of the fresh verbal agreement and contended that this was not a suit upon a contract of sea-insurance but on a fresh verbal contract for a fresh consideration. It was held that the verbal agreement was only a contract for sea-insurance with a special term for reference to a third person and, not being expressed in a sea-policy, was void.<sup>1</sup>

(2) An agreement between two insurance companies E and N was called a participation agreement. Under the agreement the N company was to share in all the risks undertaken by the marine department of the E company and was to get a

6. (1874) 9 Q B 418 (425) : 43 L J Q B 114 : 30 L T 501 : 22 W R (Eng) 951, *Fisher v. Liverpool Marine Insurance Co.*

7. ('03) 30 Cal 565 (575), *Reference under the Indian Stamp Act, 1899.*

Section 7—NOTE 3

1. (1911) 1 K B 137 (142,143) : 80 L J K B 236 : 103 L T 767, *Genforsikrings Aktieselskabet v. Da Costa.*



proportionate part of the net premiums and other benefits of E company. It was held that the agreement though called a participation agreement was only a contract of re-insurance and not being expressed in a sea-policy was invalid.<sup>2</sup>

**4. Time policy—Sub-section (2).**—Section 25 of the Marine Insurance Act, 1906 (6 Edw. VII, Ch. 41), defines a voyage and time policy thus: Where the contract is to insure the subject-matter "at and from" or from one place to another or others, the policy is called a voyage policy, and where the contract is to insure the subject-matter for a definite period of time, the policy is called a time policy.

Sub-section (2) of this section provides that in the case of a time policy the period of time shall not exceed twelve months.

A time policy for a period extending over twelve months is void. In the under-mentioned case<sup>1</sup> a time policy for a period of twelve months contained a continuation clause as follows: "Should the vessel be at sea or abroad on the expiration of this policy, it is agreed to hold it covered until arrival at final destination in United Kingdom or on the continent of Europe at a pro rata premium." It was contended that the policy should be construed as a time policy followed by a voyage policy or another time policy. It was held that if so construed it did not specify the risk or adventure sufficiently and was therefore void.

**5. Sub-section (3).—Requirements of a sea-policy.**

**Names of subscribers or underwriters.**

It is not necessary that the full signature of the insurer should appear on the policy. Initialling is sufficient to indicate the names within the meaning of this sub-section.<sup>1</sup>

**Amount or amounts insured.**

Where the defendants insurers agreed to insure the plaintiffs to the extent of the excess over certain amounts mentioned in the document, upon risks which the plaintiffs had taken or might take on goods shipped by certain steamship lines therein named, and only the maximum limit of the excess on any one ship was specified, it was held that the document did not specify the sum or sums insured and was therefore invalid as a sea-policy.<sup>2</sup> Where in reply to the query of the insurers a statement of the approximate number of bales to be shipped and their approximate value was handed over to the insurers it was held that this was not a specification of the amount or amounts to be insured.<sup>3</sup>

**Mistake in particulars, effect.**

If the description in the policy designates the subject-matter with sufficient certainty or suggests the means of doing it, a mistake in the name of the ship or other particulars will not defeat the contract.<sup>4</sup>

**6. Protection note if can be validated on payment of stamp duty.**—Under the proviso to the "General Exemption" under Art. 47, a letter of cover or protection

2. (1928) 1 Ch 74 (84), *In re National Benefit Assurance Co. Ltd.; Ex parte English Insurance Co. Ltd.* (Affirmed in 1929 App Cas 114: 98 L J Ch 1.)

Section 7—NOTE 4

1. (1902) 2 K B 384 (392, 393): 71 L J K B 739: 87 L T 356: 50 W R (Eng) 694, *Royal Exchange Assurance Corporation v. S. A. Vega*.

Section 7—NOTE 5

1. ('23) 10 A I R 1923 Bom 142 (144): 67 Ind Cas 965 (DB), *Trikamji Damji v. Verji Kanji*.

2. (1898) 2 Q B 351 (356): 67 L J Q B 777: 78 L T 734: 46 W R (Eng) 661, *Home Marine Insurance Co. Ltd. v. Smith*. (Affirmed in (1898) 1 Q B 829.)

3. ('25) 12 A I R 1925 P C 83 (85): 52 Ind App 126: 52 Cal 408: 86 Ind Cas 545 (PC), *Surajmull Nagoremull v. Triton Insurance Co. Ltd.*

4. (1871) 6 Q B 674 (685): 41 L J Q B 33: 25 L T 490, *Ionides v. Pacific Insurance Co.* (Affirmed in (1898) 1 Q B 829.)



note itself may be used as a policy of insurance if it is stamped as a policy. But as seen in Note 2 on S. 2 (20), by virtue of this section, the above proviso does not apply to sea-insurance.

But as seen in the above Note, there is no prescribed form for a policy of sea-insurance. A document may be in form a protection note but may, in substance, amount to a policy of sea-insurance. In such a case, if the document is not duly stamped it can be admitted in evidence (as a policy) under S. 35 (a) on payment of the proper stamp duty and penalty.<sup>1</sup>

But if the document is a protection note, pure and simple, and is not a sea-policy either in form or substance, it cannot be enforced at all even on payment of full stamp duty and penalty under S. 35.

The view set forth above regarding a protection note being treated in some cases as a policy of sea-insurance, was taken by the High Court of Bombay in *Tricamji v. Verji*.<sup>2</sup> This decision has been adversely criticised in Mulla and Pratt's Stamp Act, 4th Edn., 1941, p. 61 on the ground that it ignores the requirement as to *form* in S. 7 (1).

On page 60 of the same book also, it is stated that after the introduction of S. 7 into the Act, the distinction between a protection note or slip and a policy is not only one of substance but also of *form* and that "a slip cannot be a policy unless it is expressed to be one."

With great respect, the view expressed does not seem to be correct. Section 7 (1) merely says that a contract for sea-insurance must, in order to be valid, be "expressed in a sea-policy." This does not mean that the contract must be contained in a document which is *expressed* to be a sea-policy. It only means that there must be a document and that this document must be a 'sea-policy.' What a 'sea-policy' is, the section does not say. Nor is there any other provision which requires that a document must express itself to be sea-policy in order to be regarded as one. The definition in S. 2 (19) and (20) do not contain any such provision.

In the above Bombay decision, the learned Acting Chief Justice observed as follows :

"I may add that the scheme of the provisions on this point in the Indian Stamp Act appears to correspond to a large extent to the scheme in the English Statute of 1891 ; and it may be that the intention of the Legislature was to render such documents inadmissible unless expressed in the form of a regular policy except for the limited purpose of obtaining a proper policy. But, in my opinion, the definition in the Act leaves room for the view which I have taken and unless the definition of S. 7 is amended, I do not see how such a document could be excluded from its scope."

The learned authors, Mulla and Pratt, in their Stamp Act have evidently overlooked this passage.

**\*8. (1) Notwithstanding anything in this Act, any local authority raising a**

Bonds, debentures or other securities issued on loans under Act XI, 1879.

**loan under the provisions of the Local Authorities Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such**

\*[ 1879—S. 7B.]

Section 7—NOTE 6

1. ('23) 10 AIR 1923 Bom 142 (144) : 67 Ind Cas 965 (DB), *Trikamji Damji v. Verji*

*Kanji.*

2. ('23) 10 AIR 1923 Bom 142 (144) : 67 Ind Cas 965 (DB).



loan, be chargeable with a duty of <sup>a</sup>[one per centum] on the total amount of the bonds, debentures or other securities issued by it, and such bonds, debentures or other securities need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of sub-section (1) exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not :

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other securities from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1897, when such duty has not already been paid or remitted by order issued by the <sup>b</sup>[Central Government].

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

a. *Substituted* for the words "eight annas per centum" by S. 2 of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

b. *Substituted* for the words "Governor General in Council" by A. O.

1. **Legislative changes.**—This section corresponds to S. 7B in the Act of 1879 which was introduced into the Act by Act XIII of 1897, S. 1.

Originally, the *ad valorem* duty under the section was 8 annas per cent. This was altered into one per cent by Act VI of 1910.

The words "Central Government" were substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

*The Local Authorities Loan Act, 1879*, has now been replaced by Act IX of 1914.

Power to reduce, remit  
of compound duties.

\*9. <sup>a</sup>[The collecting Government] may, by rule or order published in the <sup>b</sup>[official Gazette],—

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of <sup>c</sup>[the territories under its administration], the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and



(b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities.

- a. *Substituted* for the words "Governor General in Council" by A. O.
- b. *Substituted* for the words "Gazette of India" by A. O.
- c. *Substituted* for the words "British India" by A. O.

### Provincial Amendments.

#### BOMBAY

As to the applicability of any provisions made by or under the Indian Stamp Act, 1899 to Greater Bombay, attention is invited to sub-section (2) of S. 3 of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 (Bom. Act XVII of 1945.)

#### PUNJAB

In cl. (a) of s. 9 between the word "chargeable" and the word "and" insert the following Proviso:

"Provided that with respect to instruments which are chargeable with duty under Sch. I-A, such reduction or remission may, by notification, be granted by the Provincial Government." —*Punjab Act VIII of 1922, S. 9* [15-1-1923].

1. **Legislative Changes.**—This section corresponds to S. 18 of the Act of 1860, S. 33 of the Act of 1862, S. 16 of the Act of 1869 and S. 8 of the Act of 1879.

In the present Act, the words "the collecting Government," "official Gazette" and "the territories under its administration" have been respectively substituted for "the Governor General in Council," "Gazette of India" and "British India" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. **"Collecting Government."**—As to the meaning of this expression, see S. 2 (12A) and Notes thereon.

3. **Reductions and remissions.**—Prior to the amendment of this section by the Government of India (Adaptation of Indian Laws) Order, 1937, the power to reduce or remit the duties was given to the Governor General in Council. The amendment has substituted the words "The Collecting Government" for the words "Governor General in Council." Therefore, under the amended section the power is given to the collecting Government which means either the Central Government or the Provincial Government according to the nature of the instruments.

For Notifications dealing with reductions and remissions issued under this section, see Appendix D. See also the undermentioned case<sup>1</sup> arising under item 85 of the Notification of the Central Government, dated 12th September 1931.

For exemptions under this Act itself, see Notes on S. 3.

\*[1879—S. 8; 1869—S. 16; 1862—S. 33; 1860—S. 18.]

#### Section 9—NOTE 3

1. ('34) 21 AIR 1934 Bom 231 (233): 58 Bom 437: 151 Ind Cas 911 (SB), *In the matter of Indian Stamp Act, 1899.* (Secretary of State on behalf of G. I. P. Railway conveying lands worth Rs. 89 lacs to Trustees of Port of Bombay who in return transferred lands worth Rs. 86 lacs and paid Rs. 3 lacs in cash.)

*Held* that under cl. 85, "private person" includes Trustees of Port of Bombay, that the clause is intended to apply to all exchanges between any person and Government, that land acquired for State Railway is acquired for public purposes and that therefore the instrument of exchange was exempt from duty under cl. 85.)



**B.—Of Stamps and the mode of using them.**

\*10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

- (a) according to the provisions herein contained ; or,  
 (b) when no such provision is applicable thereto—as the <sup>a</sup>[collecting Government] may by rule direct.
- (2) The rules made under sub-section (1) may, among other matters, regulate,—
- (a) in the case of each kind of instrument—the description of stamps which may be used ;  
 (b) in the case of instruments stamped with impressed stamps—the number of stamps which may be used ;  
 (c) in the case of bills of exchange or promissory notes written in any Oriental language—the size of the paper on which they are written.

a. Substituted by A. O. for the words “Governor General in Council.”

**Provincial Amendment.****EAST BENGAL**

As to the modification of this section in respect of the mode of payment see the text of the Indian stamp (East Bengal Amendment) Act, 1949 given under clause (11) of S. 2.

**Notification.**

All functions of the Central Government under, or in relation to, S. 10 have been entrusted to the Provincial Government.—See Government of India Finance Department (Central Revenues), Notification No. 9, dated 13-11-1937.

**Synopsis.**

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|---|---|
| 1. Legislative changes.                                   | 10. Instruments executed out of the Provinces.                    |
| 2. Scope of the section.                                  | 11. Hundi paper. See Notes 5 and 12.                              |
| 3. “Except as otherwise expressly provided in this act.”  | 12. Hundis.   |
| 4. “Such payment shall be indicated on such instruments.” | 13. Promissory notes. See Note 8.                                 |
| 5. Description and number of stamps to be used.           | 14. Notes and bills in Oriental languages.                        |
| 6. Stamp Rules.   | 15. Court-fee stamps.   |
| 7. Impressed stamps.                                      | 16. Several sheets of stamp paper.                                |
| 8. Adhesive stamps.                                       | 17. Use of plain paper.   |
| 9. Postage stamps.  | 18. “Stamp of improper description.” See S. 37 and Notes thereon. |

1. **Legislative changes.**—See S. 4 of the Act of 1860, Ss. 4 and 7 of the Act of 1862, Ss. 5 (b), 49 and 50 of the Act of 1869 and S. 9 of the Act of 1879.

The words “collecting Government” were substituted for the words “Governor General in Council” by the Government of India (Adaptation of Indian Laws), Order, 1937.

2. **Scope of the section.**—Sub-section (1) prescribes the general rule as to the mode of paying the duties chargeable under this Act. The sub-section enacts that

\*[1879—S. 9 ; 1869—Ss. 5 (b), 49, 50 ; 1862—Ss. 4, 7 ; 1860—S. 4. Cf. (1870) 33 & 34 Viet., C. 97—S. 6 (1).]



except as otherwise expressly provided in this Act, such duties are to be paid by means of *stamps*. It further provides that the payment of duty must be *indicated on the instrument by means of stamps*.

The above rule is to be given effect to, either in accordance with other provisions of the Act, or, where there is no such provision, in accordance with rules which may be made by the collecting Government. The provisions of S. 11 are the provisions of the Act contemplated by this sub-section.

Sub-section (2) provides that the rules made under sub-s. (1) may regulate, firstly, the description of stamps to be used in the case of every instrument; secondly, the number of stamps to be used, where impressed stamps are to be used; and thirdly, the size of the paper on which bills of exchange or promissory notes are written in any Oriental language.

The section earmarks these particulars as "among other matters" which such rules may regulate, but these rules must be limited within and confined to the purposes of this section; namely, the duties with which the instruments are chargeable and the indication of payment on such instruments.<sup>1</sup>

By S. 76 of the Act, the rules made under this section have the force of law.

**3. "Except as otherwise expressly provided in this Act."**—The general rule that under this Act duties are payable in the form of stamps is subject to exceptions. Thus, in the following cases, the duty is payable in *cash*<sup>1</sup>—

1. When instruments are brought to a Collector under S. 31 for adjudication of duty or under S. 41 with voluntary tender of duty;
2. When instruments not duly stamped are impounded and excess duty and penalty levied under the provisions of Ch. IV; [In these cases a certificate is to be endorsed on the instrument by the Collector or the Court, as the case may be, that the proper duty has been levied.]
3. When the duty is to be indicated by an impressed stamp under the rules framed by the Government.

Under no other circumstances can payment of stamp duty be made or accepted in cash.<sup>2</sup>

**4. "Such payment shall be indicated on such instruments."**—This section requires that the payment of duty must be indicated on the instrument itself. In other words, if the duty is payable by an adhesive stamp, such stamp must be affixed to the instrument in respect of which the duty is payable; and if the duty is to be paid by means of an impressed stamp, the instrument must be written on a stamp paper. The indication of payment of duty on a paper other than the one on which the instrument is written is therefore not sufficient.

Thus, where five distinct instruments were written on one parchment, stamped sufficiently for only one of those instruments and four other parchments were annexed to the first parchment, stamped sufficiently to cover the other four instruments, but no part of them was engrossed upon the additional parchments, it was held that the instruments were not properly stamped.<sup>1</sup>

The object of this provision is to prevent a stamp once used for an instrument being used again for another instrument in fraud of the revenue. Thus, in the case

#### Section 10—NOTE 2

1. ('90) 13 All 66 (71, 72): 1890 All W N 238 (FB), *Radha Bai v. Nathu Ram*.

#### NOTE 3

1. See ('04) 6 Bom L R 699 (702), *Motilal v. Jagmohandas*.
2. ('42) C P & Berar S.M. pp. 120, 121. ('33) Mad S. M. p. 23.



mentioned above, the stamps on the four additional parchments could be used for other instruments.

See also Ss. 13 and 14 and Notes thereon.

**5. Description and number of stamps to be used.**—As provided by this section, rules have been made by the Government for regulating the description and number of stamps to be used in regard to particular documents. These Rules have been given in Appendix B. They are summarised here for the sake of convenience.

Rule 3 states that there shall be two kinds of stamps, namely, impressed stamps and adhesive stamps. Rules 4 to 12 deal with impressed stamps and Rr. 13 to 17 deal with adhesive stamps. Coloured impressions (R. 8) and impressed labels (R. 10) are two variants of impressed stamps. Similarly special adhesive stamps are a special type of adhesive stamps.

The description of these stamps is given below :

(1) *Impressed stamps*.—They are papers issued by Government on which stamps of various denominations are engraved or embossed. They are of two types according as they bear the word “hundi” or not.

(2) *Coloured impressions*.—The duty on certain specified instruments may be denoted by coloured impressions marked on the skeleton forms of such instruments by the Collector of Stamp Revenue at Calcutta or the Superintendent of Stamps. The expression “Superintendent of Stamps” is defined in R. 2 (d). At first, coloured impressions could be used only in respect of instruments chargeable with a duty of one anna. But by S. 2 of the Stamp (Amendment) Act, XLIII of 1923, the duty on some of these instruments was enhanced to two annas. Rule 8 was, therefore, amended in order to facilitate the use of coloured impressions in the case of such instruments also.

(3) *Impressed labels*.—Labels may be affixed to certain instruments and impressed or perforated by the proper officer. The provision as to perforating was for the first time inserted by the Notification No. 13 of 20th May 1926. The labels are to be affixed and impressed or perforated by the proper officer. For that purpose the instrument should be brought to him before it is executed. Rule 11 states the mode of affixing and impressing labels and R. 9 defines the term “proper officer.” The definition of “impressed stamp” in S. 2 (13) includes such labels affixed by the proper officer.

(4) *Adhesive stamps*.—Rule 16 provides that adhesive stamps should bear the words “Four Annas” or “Two Annas” or “One Anna” or “Half Anna” and also the words “India Revenue” except in cases of instruments executed in Burma, Bihar and Orissa and Bombay. In Bihar and Orissa and Bombay, the adhesive stamps should bear the words “B & O” and “Bombay Revenue” respectively. In Burma, stamps used for postage, or for revenue or for both may be used.

(5) *Special adhesive stamps*.—These are a special type of adhesive stamps which bear a word or words of description of instruments. Court-fee stamps are also used as special adhesive stamps in the case of copies of maps and plans.

For the sake of easy reference, the several kinds of stamps and the instruments in respect of which they are to be used are shown in the following table—

Section 10—NOTE 4	<i>Rex v. E Reeks.</i>
1. (1727) 93 E R 803 (803) : 2 Str 716 (716),	Also see S. 13 Note 4.



Impressed, not bearing the word 'hundi.'	Impressed, bearing the word "hundi."	Coloured impressions.	Impressed labels.	Adhesive.	Special adhesive.
R. 6—Instruments not otherwise provided for.	R. 4 (1) (a)—Hundi payable otherwise than on demand but not more than one year after date or sight and for amount not exceeding Rs. 30,000.  R. 5—Promissory note or bill of exchange, except as provided by S. 11 or by Rules 13 and 17.	R. 8—Any instrument chargeable with duty of one anna.  R. 8—Instruments chargeable with duty of two annas under Arts. 5, 19, 36, 37, 43, 49 and 52.	R. 10 (i)—Instruments and their counterparts when chargeable with duty of not less than two annas under Articles, 2, 4, 7, 10, 11, 14, 20, 64-A, 6, 35, 39, 41, 44, 64-B, 59, 65; 43-B when duty exceeds two annas and 62 (a) and (b) when duty exceeds Rs. 10.  R. 10 (ii)—Instruments, written in any European language and accompanied, if not in English, by translation in English, under Arts. 5 (agreements or memoranda of agreements, which in the opinion of the proper officer cannot conveniently be written on stamp paper), 12, 13 (b) and (c), 15, 16, 26, 34, 56, 57, 18, 22, 23, 27, 32, 9, 46-A, 46-B, 31, 33, 45, 35, 38, 40, 48, 54, 55, 58, 62 (c), (d) and (e); and instruments engrossed on parchment and written in the English style which, in the opinion of the proper officer, cannot conveniently be written on stamp paper.  R. 12—Instruments executed out of British India, except those coming under S. 11 or R. 13.  R. 4 (b)—Hundi for amount exceeding Rs. 30,000 or payable at more than one year after date or sight.  <i>Note.</i> —While in cases of instruments coming under R. 10, labels may be used to denote stamp duty, they must be so used in cases of instruments coming under Rules 4 (b) and 12.	S. 11 (a)—Instruments chargeable with duty of one anna or half anna, except parts of bills of exchange payable otherwise than on demand and in sets. <i>Note.</i> —But this exception is practically annulled by R. 13 (a).  S. 11 (e)—Transfers by endorsement of shares.  R. 13 (f)—Instruments chargeable with duty under Arts. 19, 36, 37, 49 (a) (ii) and (iii) and 52.  R. 13-A—Deficiency in duty when duty cannot be paid exactly by impressed stamps, necessary impressed stamps being not in circulation.	S. 11 (b) and R. 17 (a)—Bill of exchange and promissory notes drawn or made out of British India and chargeable with duty of more than one anna—Stamps to bear the words "Foreign Bill."  S. 11 (c) and R. 17 (c)—Entry as an advocate, vakil or attorney of a High Court—Stamps to bear the words "Advocate," "Vakil" or "Attorney" as the case may be.  S. 11 (d) and R. 17 (d)—Notarial acts with foreign bill stamps bearing the word "Notarial".  Rules 13 (b) and 17 (b)—Separate instruments of transfer of shares and transfers of debentures—Stamps to bear the words "Share Transfer".  R. 14—Instrument of transfer of shares duly stamped but found to be deficient in duty subsequently due to a rise in the value of shares—Stamps to bear the words "share transfer."  <i>Note.</i> —In the above case, special adhesive stamps may be used.  Rules 13 (c) and 17 (e)—Copies of maps or plans, printed copies and copies of extracts from register given on printed forms when chargeable with duty under Art. 24—Stamps to be court-fee stamps.  Rules 13 (d) and 17 (f)—Instruments chargeable with duty under Arts. 5 (a) and (b) or 43—Stamps to bear the words "Agreement" and "Brokers' Note" respectively.  Rules 13 (e) and 17 (g)—Instruments chargeable with duty under Art. 47—Stamps to bear the word "Insurance."



As seen above, four different denominations of adhesive stamps have been prescribed by R. 16. The question, therefore, arises whether, when a stamp of a higher denomination can be used, the use of two or more stamps of smaller denominations is permissible. Now, there is no provision in the Stamp Act or in the Rules framed thereunder which restricts the number of stamps to the smallest number possible. Clause (b) of sub-s. (2) of this section, gives power to make rules for regulating the number of stamps in the case of instruments stamped with impressed stamp. But the section does not give a similar power in the case of instruments stamped with adhesive stamps. In the absence of any prohibition in the stamp-law, it appears that more than one adhesive stamp of smaller denomination may be used where one stamp of a higher denomination would have served the purpose.

Under R. 13-A where the stamp duty payable in respect of an instrument cannot be paid exactly by means of impressed stamps, the necessary stamps being not in circulation, the deficiency may be made up by affixing adhesive stamps. This rule has been interpreted by the executive orders to mean that only the least number of stamps should be used.

As to whether several sheets of stamp paper may be used, see Note 12.

**6. Stamp Rules.**—For rules framed under this section, see Appendix B.

**7. Impressed stamps.**—As has been seen in Note 5 impressed stamps are of two kinds according as they bear the word 'hundi' or not. For the use of impressed stamps bearing the word "hundi," see Note 12.

Rule 6 is a general rule and provides that, except in the case of certain instruments, all instruments chargeable with duty should be written on a stamp paper of proper value not bearing the word "hundi." The excepted instruments are those provided for by S. 11 and Rules 10, 12 and 13.

The use of impressed stamps is made obligatory by the Rule in the case of all instruments except those mentioned above. But the Rule cannot be read as laying down a prohibition against the use of impressed stamps in the case of the excepted instruments. Hence, such instruments *may* also be stamped with impressed stamps.

Rules 4 and 5 (which also require the use of impressed stamps in certain cases) should also be read in the same way. Thus, a promissory note chargeable with a duty of one anna is not compulsorily liable to be stamped with an impressed stamp, but may be properly stamped with an adhesive stamp under S. 11 (a). If, however, instead of affixing an adhesive stamp, the note is written on a hundi paper, it cannot be said that the note is not duly stamped.<sup>1</sup>

**8. Adhesive stamps.**—Section 11 and R. 13 enumerate the particular instruments which may be stamped with adhesive stamps. However, R. 17 requires that many of these instruments should be stamped with special adhesive stamps, with the result that only a few kinds of instruments are liable to be stamped with adhesive stamps as such as the table in Note 5 will show. Moreover, it is to be noted that R. 8 offers an alternative way of denoting stamp duty by coloured impressions in the case of instruments specified in S. 11 (a) and R. 13 (f).

Section 10—NOTE 7

1. ('85) 1885 All W N 317 (318) (DB), *Sadik Ali v. Rani Kanno Dai*.  
[See also ('90) 13 All 66 (71, 72): 1890 All W N 238 (FB), *Radha Bai v. Natho Ram*. (A rule which says that certain promissory

notes shall be written on impressed sheets bearing the word "hundi" cannot be interpreted as enacting that other promissory notes shall not be written on impressed paper of the proper value if it happens to bear the word "hundi.")]



At first, the instruments specified in R. 13 (f) were chargeable with a duty of one anna. They could, therefore, be stamped with adhesive stamps under S. 11 (a). But S. 2 of the Stamp (Amendment) Act, XLIII of 1923, increased the duty on those instruments to two annas. Clause (f) was therefore inserted by Notification No. 1185, dated the 1st October 1923 to facilitate the payment of duty even on such instruments by adhesive stamps.

Besides the above two provisions—section 11 and R. 13—Rule 13-A also permits the use of adhesive stamps in case of instruments the duty on which cannot be paid exactly by impressed stamps, the stamps of necessary value not being in circulation. The addition of this Rule by Notification No. 6733, dated the 23rd December 1922 was occasioned by the enhancement, by the Provincial Acts of 1922, of stamp duties which could not be paid by means of impressed stamps only.

A hundi can be stamped with an adhesive stamp under S. 11 (a) if it is chargeable with a duty of one anna. A hundi for the sum of Rs. 380 payable otherwise than on demand, not being chargeable with the duty of one anna, cannot, therefore, be stamped with an adhesive stamp.<sup>1</sup>

As to the time when an adhesive stamp should be affixed to an instrument, see S.17 and Notes thereon.

**9. Postage stamps.**—Under the present Act postage stamps were not allowed to be used for denoting stamp duties before 1905. In that year, by Notification No. 5300 of the 21st September 1905, one anna postage stamps were permitted to be used as adhesive stamps and from 1906 half anna postage stamps were also allowed to be used. The provisions were contained in R. 16 of the Stamp Rules.

The Stamp (Amendment) Act, XLIII of 1923, raised the duty of one anna to two annas in the case of instruments falling under Arts. 5, 19, 36, 37, 43 and 52, and by amending Art. 49, it prescribed a duty of two annas on promissory notes payable on demand of a value exceeding Rs. 250 but not exceeding Rs. 1000 and a duty of four annas on such notes of a value exceeding Rs. 1000. However, no corresponding change was effected in R. 16 for the purpose of allowing the use of two annas and four annas postage stamps. On the contrary, Notification No. 1185 of 1st October 1923 provided that the necessary number of one anna and half anna postage stamps should be used for denoting the duty of two annas or four annas. The operation of the amending Act, therefore, resulted in a two-fold hardship. On the one hand, the executants who were not aware of the excess duty imposed by the Legislature affixed one anna stamp and, on the other hand, others affixed a four annas postage stamp in ignorance of R. 16. By the Indian (Specified Instruments) Stamp Act, XIII of 1924, the Legislature afforded relief in regard to instruments executed in British India between 30th September 1923 and 1st April 1924 and stamped with one anna postage stamps according to the old law, by declaring such instruments to be duly stamped. But the Act did not declare the promissory notes which were stamped with four annas postage stamps as duly stamped. As regards such cases, Notification No. 48 of 5th January 1925 amended R. 16 so as to allow the use of two annas and four annas postage stamps. But the Notification was not given a retrospective effect and the measure fell short of giving relief in regard to promissory notes previously executed. It was, however, held by the late Judicial Commissioner's Court of Sind that a demand note executed on 15th February 1924 could be validated by the Collector under S. 37.<sup>1</sup> The Promissory Notes (Stamp) Act, XI of 1926, was then passed validating promissory notes executed after the 30th September 1923 and before the 5th January

Section 10 —NOTE 8

1. ('80) 2 Mad 173 (174) (DB), *Devaji v.*

*Ramkrishnah.*

Also see Note 12 and S. 11 Note 3.



1925 and stamped with postage stamps of a description other than that required by the law. This Act had, however, no reference to a case where a promissory note was not stamped with a stamp of the value required by law in force at the time the promissory note was executed. It was intended only to validate cases where the promissory note bore stamp of sufficient amount but the stamps were postage stamps of a wrong description.<sup>2</sup>

The use of postage stamps was totally prohibited from 1st April 1934 by Notification Stamps No. 3 of 31st March 1934 which amended Rule 16 making the use of separate revenue stamps obligatory.<sup>3</sup> Under the proviso to R. 18, as amended by the above Notification, the Collector cannot certify an instrument bearing a postage stamp as duly stamped, if it was executed on or after the 1st April 1935.

Quarter anna and three anna postage stamps were never allowed by law to be used for denoting stamp duties.<sup>4</sup> As to whether an instrument bearing such stamps can be certified to be valid by the Collector under S. 37 and R. 18, see Notes on S. 37.

**10. Instruments executed out of the Provinces.**—Under R. 12 (1) all instruments executed out of British India and requiring to be stamped after their receipt in British India, except bills of exchange and promissory notes should be stamped with impressed labels. Section 11 (b) provides that bills of exchange and promissory notes drawn or made out of British India may be stamped with adhesive stamps. But R. 17 (a) further provides that if these instruments are chargeable with a duty of more than one anna, then they must be stamped with special adhesive stamps bearing the words "Foreign Bill." It follows that where a bill of exchange or promissory note is chargeable with a duty of one anna, the duty may be denoted by affixing an adhesive stamp or alternatively by a coloured impression under R. 8. (See table in Note 5.)

As to the time when the instruments executed out of British India should be stamped, see Ss. 18 and 19 and Notes thereon.

**11. Hundi paper.**—See Notes 5 and 12.

**12. Hundis.**—Rule 4 specifically deals with the mode of stamping hundis. The following three modes have been prescribed for the purpose :

(1) A hundi chargeable with a duty of one anna may be stamped with an adhesive stamp under S. 11. Hence, a hundi payable otherwise than on demand and hence chargeable with a duty of more than one anna cannot be stamped with an adhesive stamp.<sup>1</sup>

#### Section 10—NOTE 9

1. ('26) 13 AIR 1926 Sind 211 (213) : 94 Ind Cas 747, *Parsram Hirji v. Parsram Hassa-nand*.

2. ('28) 110 Ind Cas 747 (748) (Cal), *Ambika Charan v. Kalipada Bhattacharya*.

3. See ('37) 24 AIR 1937 Pat 560 (560, 561) : 171 Ind Cas 591, *Banke Bihari v. Ram Uchit*. (A promissory note executed on 28th March 1934 was affixed with revenue stamps the use of which was made compulsory by the Government only from 1st April 1934. Held that these stamps must have been available before 1st April 1934 and that a suit on the

promissory note should not be dismissed merely on this ground especially when the defendant had admitted his liability.)

4. ('33) 20 AIR 1933 Lah 240 (240) : 141 Ind Cas 569, *Rup Chand v. Beli Ram*. (Demand promissory note bearing "India Postage and Revenue" stamp of one anna and postage stamp of three annas, held to be not duly stamped.)

#### Section 10—NOTE 12

1. ('80) 2 Mad 173 (174) (DB), *Devaji v. Ramakrishnaiah*.

('82) 8 Cal 721 (723) : 11 Cal L Rep 310 (DB), *Radhakant Shaha v. Abhoychurn Mitter*.

Also see Note 8 and S. 11 Note 3.



(2) A hundi payable otherwise than on demand, but not more than one year after date or sight and for an amount not exceeding Rs. 30,000 must, under R. 4 (1) (a), be written on stamp paper of proper value bearing the word "hundi."

But, as provided by R. 5, a hundi paper may also be used for writing promissory notes and bills of exchange.<sup>2</sup> They may alternatively be written on a stamp paper not bearing the word "hundi."

Rule 6A, framed under the Stamp Act of 1879, provided that promissory notes chargeable with a duty of annas 6, 10 or 12 should be written on hundi papers. With reference to this rule, it was held in the undermentioned cases<sup>3</sup> that the rule could not be interpreted as enacting that other promissory notes should not be written on a hundi paper. These cases are of academic interest only, as there is no such rule at present.

As has been seen in Note 7, a promissory note which may be stamped with an adhesive stamp of one anna cannot be regarded as not duly stamped if it is written on a hundi paper of a larger value.<sup>4</sup>

(3) A hundi for an amount exceeding Rs. 30,000 or payable at more than one year after date or sight must under R. 4 (1) (b) be written on a paper supplied for sale by the Government and bearing an impressed label.

Clause (b) can only apply to a hundi. Hence, a promissory note payable at more than one year after date need not be stamped and written as provided by this clause. It is duly stamped if it is written on a paper bearing an impressed stamp.<sup>5</sup>

Sub-rule 2 of R. 4 prescribes the size of the paper on which a hundi should be written.

As to whether several sheets of hundi paper can be used for writing a hundi, see Note 16.

13. **Promissory notes**—See note 8.

14. **Notes and bills in Oriental languages**—The words "bills of exchange or promissory notes written in any Oriental language" were substituted in cl. (c) of sub-s. (2) of this section for the word "hundis" which occurred in the corresponding provision in the Stamp Act of 1879. A bill of exchange written in an Oriental language is a hundi and R. 4 (2) prescribes the size of the paper on which a hundi should be written. No rule has been framed for regulating the size of the paper on which promissory notes in an Oriental language should be written. But, as provided by R. 5, they may be written on a hundi paper.

15. **Court-fee stamps**.—The Stamp Rules recognise the use of court-fee stamps in the following two cases:

(1) Under R. 13A a Provincial Government may direct that instead of adhesive stamps described in R. 16, adhesive court-fee stamps should be used for the purpose of making up the deficit in stamp duty which cannot be paid exactly by impressed stamps.

(2) Similarly, R. 17 (e) requires that copies of maps or plans, printed copies and copies of or extracts from registers given on printed forms, when chargeable with duty under Art. 24, should be stamped with court-fee stamps.

2. ('19) 6 AIR 1919 Cal 235 (238) : 51 Ind. Cas 88 (DB), *Biswanath Bhattacharya v. Gobind Chandra*.

3. ('91) 13 All 66 (71) : 1890 All W N 238 (FB), *Radha Bai v. Nathu Ram*.

('91) 14 Mad 32 (35), *Bank of Madras v. Subbarayalu*.

('91) 1891 Pun Re No. 21, page 124 (128) (DB),

*Hill v. Nihal Chand*.

Also see S. 2 (11) Note 7, S. 35 Note 3 and Art 49 Note 4.

4. ('85) 1885 All W N 317 (318) (DB), *Sadik Ali v. Rani Kanno Dai*.

5. ('34) 21 AIR 1934 Pesh 1 (2) : 145 Ind Cas 662 (DB), *Hafiz Umardaraz Khan v. Akbar Khan*.



Their Lordships of the Privy Council have, dissenting from the opinion to the contrary expressed in the undermentioned case<sup>1</sup> of the Allahabad High Court, held that a revenue stamp surcharged with the words "court-fee" is a stamp of improper description within the meaning of S. 37.<sup>2</sup> For a full discussion of this subject, see Notes on S. 37.

**16. Several sheets of stamp paper.**—Under S. 49 of the Stamp Act of 1869, when the amount of duty payable on an instrument exceeded Rs. 1,000, more than one stamp paper could be used for denoting the duty on the instrument. When the amount of duty did not exceed Rs. 1,000, two or more stamp papers could be used only if a single stamp paper was not procurable and the Collector or stamp-vendor certified to that effect. Thus, in the absence of the requisite certificate, a bond written on two stamp papers of necessary value in a case in which the duty did not exceed Rs. 1,000 was held not to be duly stamped.<sup>1</sup>

These provisions were not repeated in the subsequent Acts; but power has been given under this section to the Governor-General in Council, and, since the amendment in 1937, to the collecting Government, to make rules for regulating the number of impressed stamps to be used in the case of an instrument.

Rule 7 (1), which was, accordingly, framed, allows the use of two or more sheets of stamp paper to make up the amount of duty chargeable in respect of an instrument, provided that a portion of the instrument is written on each sheet so used. Thus, a bill of exchange written on three sheets of stamp paper of the requisite value will be held to be duly stamped.<sup>2</sup>

According to R. 4 (3), the provisions of R. 7 (1) apply also to hundis. Hence, a hundi can be written on two or more sheets of hundi stamp paper.

Under R. 4 (c) read with R. 7 (1) framed under the Stamp Act of 1879, a hundi could be written on several sheets of stamp paper only if a single stamp paper of the required value was not procurable. Thus, in the undermentioned case,<sup>3</sup> a hundi written on two stamp papers in contravention of R. 4 (c) was held not to be duly stamped. No such restriction is place in the present rule and the case is, therefore, no longer good law.

See also Notes on S. 13.

**17. Use of plain paper.**—Sub-rule (2) of R. 7 allows the use of plain paper. It is an enabling provision, authorizing parties to use plain paper in addition to a stamp paper where the entire instrument cannot be written on a side of the stamp paper

#### Section 10—NOTE 15

1. ('01) 23 All 213 (215): 1901 All W N 54 (FB), *Reference under S. 57 of Act No. II of 1899.*
2. ('29) 16 AIR 1929 P C 279 (282): 56 Ind App 379: 7 Rang 624: 120 Ind Cas 645 (PC), *Ma Pwa May v. Chettiar Firm.*  
Also see S. 37 Note 3.

#### Section 10—NOTE 16

1. ('76) 1876 Pun Re No. 26, p. 42 (43) (FB), *Cheyn Sukh Dass v. Musa.* (1874 Pun Re No. 64 overruled.)  
[See also (1874) 7 Mad H C R (App) 36 (36, 37), *High Court Proceedings*, 6th November, 1874. (A bond written partly on one and partly on another stamp paper, the two aggregating the proper stamp leviable was

tendered in evidence without the certificate required by S. 49 of the General Stamp Act. Held that there was a deficiency of stamp on the bond and therefore a liability to the penalty, and that the deficiency must be held to be equivalent to the difference between the value of the stamp on one of the papers and the whole value chargeable.)]

Also see S. 2 (11) Note 5.

2. ('19) 6 AIR 1919 Cal 235 (238): 51 Ind Cas 88 (DB), *Biswanath Bhattacharya v. Gobinda Chandra.*

Also see S. 2 (11) Note 9, S. 13 Note 4 and Art. 13 Note 4.

3. ('86) 1886 Pun Re No. 73, page 157 (158) (DB), *Samad Mir. v. Brij Lal.*

Also see S. 13 Note 4.



which bears the stamp. The sub-rule while favouring the writing of an instrument only on that side does not prohibit writing on the reverse side.<sup>1</sup>

The sub-rule is subject to the proviso that a substantial part of the instrument must be written on the stamp paper before a plain paper is used.

Plain paper cannot be sub-joined to a hundi stamp paper as the sub-rule expressly excludes the latter from its operation.

A proviso added to the corresponding rule made under the Stamp Act of 1879 required that the part of the instrument written on the plain paper must be attested by the signatures or marks of all the persons executing the instrument and the witnesses to the same. The proviso was held to be *ultra vires* by the High Court of Madras in the undermentioned case.<sup>2</sup> It was therefore repealed by Notification No. 2170 of 22nd May 1891.

18. "Stamp of improper description."—See S. 37 and Notes thereon.

Use of adhesive stamps.

\*11. The following instruments may be stamped with adhesive stamps, namely :—

- (a) instruments chargeable with the duty of one anna<sup>a</sup> [or half an anna], except parts of bills of exchange payable otherwise than on demand and drawn in sets ;
- (b) bills of exchange, <sup>b</sup> [\* \*] and promissory notes drawn or made out of <sup>c</sup>[the Provinces] ;
- (c) entry as an advocate, vakil or attorney on the roll of a High Court ;
- (d) notarial acts, and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

a. These words were *inserted* by S. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

b. The word "cheques" was *omitted* by S. 5 of the Indian Finance Act, 1927 (V of 1927).

c. *Substituted* for "British India" by I. O.

#### Provincial Amendments.

##### BOMBAY

In cl. (a) of S. 11 before the words "one anna" *insert* the words "two annas."  
—*Bombay Act II of 1932, Pt. IV, S. 15 (2).* [1-4-1932.]

##### MADRAS

In cl. (a) of S. 11, before the words "one anna" *insert* the words "one and a half annas."—*Madras Act XVI of 1943, S. 4 (b).* [1-10-1943.]

##### SIND

Same as that of Bombay.—*Sind Act I of 1938, S. 2.* [31-3-1938.]

#### SYNOPSIS

1. Legislative changes.
2. "May."
3. Clause (a).
4. Clause (b).

5. Clause (c).
6. Clause (d).
7. Clause (e).

\*[1879—S. 10 ; 1869—S. 5 (a) ; 1862—Ss. 5, 6 ; 1860—S. 5.]

#### Section 10—NOTE 17

1. ('84) 7 Mad 176 (181) (FB), *Reference under Stamp Act, S. 46.*
- ('81) 5 Bom 188 (195) (FB), *Daulatram v. Vitho.* (Ordinarily, if the instrument be of sufficient length, both sides of the paper are

written upon.)

- Also see S. 2 (11) Note 7 and S. 13 Note 5.
2. ('85) 8 Mad 532 (540) (FB), *Reference under Stamp Act, S. 46.*
- Also see S. 2 (11) Note 9, S. 13 Note 5 and S. 75 Note 2.



1. **Legislative changes.**—The words “or half an anna” were inserted in cl. (a) by S. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

The word “cheques” occurring after the words “bills of exchange” in cl. (b) was omitted by S. 5 of the Indian Finance Act, 1927 (V of 1927).

2. **“May.”**—As seen in Note 9a of the Preamble, the word “may” in itself has only a permissive and not an obligatory sense. The use of the word “may” in the sentence “The following instruments may be stamped with adhesive stamps” shows that the Legislature does not make obligatory but permits the use of adhesive stamps in the case of instruments mentioned in the various clauses of the section and such instruments may be legally written on impressed stamp papers also.<sup>1</sup> Thus, where a promissory note payable on demand, which under the Stamp Act of 1879 was to be treated as of the nature of a *hundi*, could have been legally stamped with an adhesive stamp under S. 10 (a) of the Act being chargeable with a stamp duty of one anna under Art. 11 (a), Sch. 1 of the Act but was written on paper bearing an impressed stamp for a larger amount and stamped as *hundi* paper, it was held that the instrument could not be said to be improperly stamped.<sup>2</sup>

3. **Clause (a).**—This clause permits instruments chargeable with the duty of one anna or half an anna to be stamped with adhesive stamps except parts of bills of exchange payable otherwise than on demand and drawn in sets. The following are the articles in Sch. I under which a duty of one anna is chargeable:—Articles 1, 5 (b), 28, 41, 47, 49, 53 and 60. Article 47 is the only article under which a duty of half an anna is chargeable. See also Government of India, F. D. Notification No. 6—Stamps, dated 12-9-1931, item 89 given in Appendix D.

Clause (a) of Art. 11 of Sch. I of Act 1 of 1879 prescribed a stamp duty of one anna for a bill of exchange or promissory note (not being a cheque, bond, bank-note or currency note) payable on demand and for an amount exceeding Rs. 20. They could therefore be stamped with an adhesive stamp under the first part of cl. (a) of S. 10 of the Act.<sup>1</sup> Under Act II of 1899 as amended by the Finance Act, V of 1927, there is no duty payable for a bill of exchange payable on demand.

For a bill of exchange (not being a bond, bank note or currency note) payable otherwise than on demand and drawn singly the stamp duty is more than one anna. It does not, therefore, come under this clause, and cannot be stamped with an adhesive stamp.<sup>2</sup>

Where the amount of a bill of exchange payable otherwise than on demand does not exceed Rs. 200 and the bill is drawn in a set of three, the stamp duty for each part is one anna. But parts of bills of exchange payable otherwise than on demand and drawn in sets are excepted by this clause. Rule 13 (a) of the Stamp Rules, however, allows the use of adhesive stamps in such a case.

#### Section 11—NOTE 2

1. ('33) Mad S M p. 24.
2. ('85) 1885 All W N 317 (318) (DB), *Sadik Ali v. Rani Kanno Dai*.

#### Section 11—NOTE 3

1. ('82) 8 Cal 721 (723) : 11 Cal L Rep 310 (DB), *Radhakant Shaha v. Abhoychurn Mitter*.  
('85) 1885 All W N 317 (318) (DB), *Sadik Ali v. Rani Kanno Dai*.

2. ('80) 2 Mad 173 (173, 174) (DB), *Devaji v. Ramakrishnaiah*. (A *hundi* for a sum of Rs. 380 payable 21 days after date i.e., otherwise than on demand, cannot be stamped with an adhesive stamp, because the stamp required is more than one anna.)

('82) 8 Cal 721 (723) : 11 Cal L Rep 310 (DB), *Radhakant Shaha v. Abhoychurn Mitter*.

('33) Mad S M p. 24.

Also see S. 10, Notes 8 and 12.



4. **Clause (b).**—This clause permits bills of exchange and promissory notes drawn or made out of British India to be stamped with adhesive stamps. The word “cheques” occurring after the words “bills of exchange” has been omitted by S. 5 of the Finance Act, V of 1927. For cheques, no stamp duty is now chargeable.

The words “drawn or made out of British India” apply to the entire clause i.e., both to bills of exchange and promissory notes and not to promissory notes alone. Therefore, a bill of exchange payable otherwise than on demand and drawn or made in British India cannot be stamped with an adhesive stamp.<sup>1</sup>

Rule 17 (a) of the Stamp Rules of 1925 provides that when bills of exchange and promissory notes drawn or made out of British India and chargeable with a duty of more than one anna are stamped with adhesive stamps, they shall be stamped with stamps bearing the words “Foreign Bill.”

5. **Clause (c).**—This clause permits the use of adhesive stamps for an instrument of entry as an advocate, vakil or attorney on the roll of a High Court. Rule 17 (c) of the Stamp Rules of 1925 provides that when such an instrument is stamped with an adhesive stamp, it shall be stamped with a stamp bearing the word “Advocate,” “Vakil” or “Attorney” as the case may be. Rule 15 of the Stamp Rules gives the procedure to be followed at the time of affixing such stamps.

6. **Clause (d).** Rule 17 (d) of the Stamp Rules of 1925 provides that when instruments of notarial acts are stamped with adhesive stamps, they shall be stamped with foreign bill stamps bearing the word “Notarial.”

7. **Clause (e).**—Rule 17 (b) of the Stamp Rules of 1925 provides that when separate instruments of transfer of shares and transfers of debentures of public companies and associations are stamped with adhesive stamps they shall be stamped with stamps bearing the words “Share Transfer.”

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\*12. (1) (a) **Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again ; and**

(b) **whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.**

(2) **Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.**

(3) **The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.**

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\*[1879—S. 11 ; 1869—Ss. 31, 33 ; 1862—Ss. 8, 11 ; 1860—Ss. 6, 9. Cf. (1870) 33 & 34 Viet., C. 97—S. 24 (1); (1891) 54 & 55 Viet., c. 39—S. 8 (1).]

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Section 11—NOTE 4  
 1. ('80) 2 Mad 173 (173, 174) (DB), *Devaji* | v. *Ramkrishnaiah*.



## SYNOPSIS

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| <ol style="list-style-type: none"> <li>1. Scope and object of the section.</li> <li>2. Clause (a).</li> <li>3. Clause (b). See Note 2.</li> <li>4. Mode of cancellation—Sub-s. (3).</li> <li>5. Time of cancellation.</li> <li>6. Cancellation by whom to be made.</li> <li>7. Effect of non-cancellation—Sub-s. (2).</li> </ol> | <ol style="list-style-type: none"> <li>8. Effect of due cancellation.</li> <li>9. Due cancellation—Onus of proof.</li> <li>10. Presumption as to stamp.</li> <li>11. Use of more than one stamp paper for same instrument. See S. 10 Note 16 and S. 13 Note 4.</li> <li>12. Additional sheets of plain paper. See S. 10 Note 17 and S. 13 Note 5.</li> </ol> |
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**1. Scope and object of the section.**—This section provides as to cancellation of adhesive stamps only. Impressed stamps are not to be cancelled or defaced. The manner of using an impressed stamp for the purpose of engrossing an instrument thereon is provided for in section 13.

The object of cancellation of adhesive stamps is to prevent the same stamps from being used more than once<sup>1</sup> and to prevent the consequent loss to the revenue. This object is secured by sub-s. (2) of this section under which the instrument on which the adhesive stamp has not been cancelled is to be deemed unstamped. The failure to cancel an adhesive stamp as required by this section has also been made punishable under S. 63 of the Act.

The duty of cancelling an adhesive stamp under this section arises only in the cases mentioned in cls. (a) and (b) of sub-s. (1). Clause (a) deals with cases where stamping is *permissible* after the execution of a document. Such cases are provided for in Ss. 18 and 19. In other cases, the stamping must be done before or at the time of the execution (S. 17). Where in such cases the stamp is affixed *after* the execution of the instrument the case cannot be regarded as covered by cl. (a) and no duty arises under that clause to cancel the stamp. There is no question of cl. (b) applying to such cases as that clause deals with cases where the stamp is affixed *before* execution. Hence, the failure to *cancel* the stamp in such a case is not an offence under S. 63. But the document will be one not duly stamped as the stamp is not *affixed* at the proper time.

Sections 261, 262 and 263 of the Indian Penal Code make punishable offences relating to fraudulent use of Government stamps, which have already been used.

**2. Clause (a).**—This clause deals with cases in which the instruments chargeable with duty may be stamped after execution which, according to S. 2 (10), means signature. Such cases are provided for in Ss. 18 and 19 of the Act.<sup>1</sup> Section 18 requires that instruments other than bills of exchange and promissory notes executed out of British India and chargeable with duty under this Act should be stamped within three months of being received in British India. Section 19 provides for the stamping of bills of exchange and promissory notes executed out of British India by the first holder in British India. In both these cases this clause requires that the person affixing the stamp should cancel the same at the time of such affixure so that it cannot be used again. In cases not coming under Ss. 18 and 19 the stamping must be done before or at the time of execution. Such cases do not come under cl. (a) and no duty to cancel the stamp arises in such cases even though, as a fact, the stamp is affixed after the execution of the document.

## Section 12—NOTE 1

<sup>1</sup> ('34) 21 AIR 1934 Lah 606 (606): 153 Ind Cas 1076, *Sohan Lal Nihal Chand v. Raghunath Sing.*

('36) 23 AIR 1936 Oudh 176 (176): 161 Ind Cas 150 (DB), *G. A. Heven v. Sultan Khan.*

('38) 25 AIR 1938 Lah 505 (506): 181 Ind Cas 115, *Punjab Zamindars Bank v. Mohammad Shaffi.*

## Section 12 NOTE 2

<sup>1</sup> ('87) 9 All 210 (212): 1887 All W N 5, *Queen-Empress v. Rahat Ali Khan.*



Clause (b) on the other hand deals with cases where the stamp is affixed before signing. It provides that the person executing the instrument should cancel the stamp at the time of his signature so that it cannot be used again.

The receipt to a salary bill of a Government servant is an instrument which is required to be stamped at or before the time of its execution and therefore is not an instrument contemplated by this clause.<sup>2</sup>

3. **Clause (b).**—See Note 2.

4. **Mode of cancellation—Sub-section (3).**—As seen in Note 1, the object of cancellation of adhesive stamps is to prevent the same stamps from being used again, and for this purpose it is necessary that the used stamp should bear on it some effective mark to show that it has been used.<sup>1</sup> Section 11 of the Stamp Act of 1879 did not prescribe any particular form of cancellation but merely provided that the stamp should be so cancelled that it cannot be used again. Sub-section (3) which was added in the Act of 1899 does not lay down any exhaustive list of the modes in which cancellation of adhesive stamps may be effected. It merely serves as a guide and indicates one of the modes in which cancellation may be done in an effectual manner,<sup>2</sup> i.e., by writing on or across the stamp the name or initials of the person cancelling the stamp, or the name or initials of his firm, with the true date of such cancellation.

The words "so that it cannot be used again" occurring in sub-sections (1) and (2) indicate what would be an effectual cancellation of stamps under this Act. These words do not imply such a degree of cancellation as would make it physically impossible for any dishonest person to make a fraudulent use of the stamp again.<sup>3</sup> The section merely requires that the stamp in its cancelled condition must not be capable of being used again by an ordinary conscientious man as a new stamp. The true test, therefore, for determining whether an adhesive stamp has been effectually cancelled is whether an ordinary conscientious man would, on seeing the stamp, come to the conclusion that it had already been used so as to preclude him from using it again.<sup>4</sup> This question is one purely of fact to be decided on an examination of the

2. ('87) 9 All 210 (212): 1887 All W N 5, *Queen-Empress v. Rahat Ali Khan*.

Section 12—NOTE 4

1. ('04) 28 Bom 432 (433): 6 Bom L R 436 (DB), *Virabhadrapa v. Bhimaji*.

2. ('38) 25 AIR 1938 Lah 505 (506): 181 Ind Cas 115, *Punjab Zamindars Bank v. Md. Shaffi*.

('04) 28 Bom 432 (433): 6 Bom L R 436 (DB), *Virabhadrapa v. Bhimaji*. (Substantially there is no difference between the old law and the new law. The mere drawing of two parallel lines over a receipt stamp, affixed to an instrument, does not amount to its cancellation either under S. 11 of the Stamp Act of 1879, or S. 12 (3) of the Stamp Act of 1899.)

('36) 23 AIR 1936 Oudh 176 (176): 161 Ind Cas 150 (DB), *G. A. Heven v. Sultan Khan*. [See ('12) 16 Ind Cas 96 (97) (Mad), *Solanalai Mudaliar v. Vadamalai Muthiran*.]

3. ('28) 15 AIR 1928 Bom 80 (89): 108 Ind Cas 465, *In re Tata Iron and Steel Co. Ltd.*

('38) 25 AIR 1938 Lah 505 (506): 181 Ind Cas 115, *Punjab Zamindars Bank v. Mohammad Shaffi*. (Thus, where the executant of a promissory note clearly initials his signature on each of the two adhesive stamps on it, the mere fact that the date on which the executant initialled does not appear on any of them, does not make it "not effectually cancelled.")

('37) 24 AIR 1937 Rang 408 (410): 1937 Rang LR 127: 173 Ind Cas 604, *J. N. Ezekiel v. E. Mordecai*. (The question resolves itself into this, if the stamp became detached from the document to which it has been affixed and came into the possession of a person of ordinary honesty and prudence could he conscientiously use that stamp again—Applying this criterion, a stamp can be as effectually cancelled by a line deliberately drawn across it with the object of cancelling it, as by writing a name or a date across it.)

('42) 29 AIR 1942 Sind 130 (131, 132): ILR (1942) Kar 56: 201 Ind Cas 711 (DB), *Motiram Nathumal v. Mangharam Tirathdas*.

('12) 15 Oudh Cas 58 (60, 61): 15 Ind Cas 202, *Mohammad Amir Mirza Beg v. Kedar Nath*.

('21) 8 AIR 1921 Sind 77 (77): 15 Sind LR 34: 66 Ind Cas 5 (DB), *Pessumal v. Gaganmal*.

4. ('37) 24 AIR 1937 Rang 413 (415): 178 Ind Cas 144, *Mary K. Niemeyar v. Ebrahim Moosaji*. (The thumb impression on one of the two stamps pasted side by side on an instrument impinged the other stamp only to the extent of some millimeters discolouring only a very small portion of the perforation itself and a still smaller portion of the actual stamp—Held that to all intents and purposes the stamp was a new and uncanceled stamp.)



stamp in each particular case.<sup>5</sup>

The general view is that the drawing of one line or two or more parallel lines across the face of an adhesive stamp is an effectual cancellation within the meaning of this section.<sup>6</sup> Similarly, it has been held that the drawing of two lines crossing each other, across the face of a stamp is an effectual cancellation.<sup>7</sup> In the under-mentioned cases<sup>8</sup> it has been held that the mere writing of the name or initials of

- (21) 8 AIR 1921 Sind 77 (77) : 15 Sind L R 34 : 66 Ind Cas 5 (DB), *Pessumal v. Gaganmal*.
- (30) 17 AIR 1930 Sind 4 (8) : 126 Ind Cas 741, *Atmaram Mohanlal v. Natandas Devidayal*. (Applying this test it was held that where the stamp was cancelled by writing the initial T it was duly cancelled.)
- (25) 12 AIR 1925 Rang 209 (210) : 3 Rang 39 : 88 Ind Cas 933, *Kolai Sai v. Balai Hajam*. (Defendant who was illiterate and used a cross-mark as the ordinary method of his acknowledgment executed a pronote and made a cross-mark on the stamp affixed to the pro-note—Held that the cross-mark effectually cancelled the stamp within the meaning of S. 12 of the Stamp Act.)
- (19) 6 AIR 1919 All 196 (199) : 41 All 169 : 52 Ind Cas 974 (DB), *Mahadeo Kori v. Sheoraj Ram*.
- (42) 29 AIR 1942 Sind 130 (131, 132) : ILR (1942) Kar 56 : 201 Ind Cas 711 (DB), *Motiram Nathumal v. Mangharam Tirathdas*.
- (37) 24 AIR 1937 Rang 408 (410) : 1937 Rang L R 127 : 173 Ind Cas 604, *J. N. Ezekiel v. E. Mordecai*.
5. (19) 6 AIR 1919 All 196 (199) : 41 All 169 : 52 Ind Cas 974 (DB), *Mahadeo Kori v. Sheoraj Ram*. (Where a person writes his name close to a stamp on its left side and continues the line which forms the upper-portion of the writing in the Hindi character across the face of the stamp, and immediately against the right hand side thereof continues his writing, this is an effectual cancellation.)
- (28) 15 AIR 1928 Bom 80 (89) : 108 Ind Cas 465, *In re Tata Iron & Steel Co. Ltd.*
- (20) 7 AIR 1920 Lah 374 (375) : 1919 Pun Re No. 148 : 54 I. C. 976, *Mela Ram v. Brij Lal*. (Where the stamp has been cancelled by drawing diagonal lines right across it, their ends extending on to the paper, there is an effectual cancellation of the stamp.)
- (35) 22 AIR 1935 Lah 716 (717) : 161 Ind Cas 487 (DB), *Hafiz Allah Baksh v. Dost Mohammad*.
- (38) 25 AIR 1938 Lah 505 (506) : 181 Ind Cas 115, *Punjab Zamindars Bank v. Mohammad Shaffi*.
- (12) 15 Oudh Cas 58 (60, 61) : 15 Ind Cas 202, *Mohammad Amir Mirza Beg v. Babu Kedar Nath*.
- (37) 24 AIR 1937 Rang 408 (410) : 1937 Rang L R 127 : 173 Ind Cas 604, *J. N. Ezekiel v. E. Mordecai*.
- (37) 24 AIR 1937 Rang 413 (415) : 178 Ind Cas 144, *Mary K. Niemeyer v. Ebrahim Moosaji*.
- (21) 8 AIR 1921 Sind 77 (77) : 15 Sind L R 34 : 66 Ind Cas 5 (DB), *Pessumal v. Gaganmal*.
- (42) 29 AIR 1942 Sind 130 (131) : I L R (1942) Kar 56 : 201 Ind Cas 711 (DB), *Motiram Nathumal v. Mangharam Tirathdas*.
6. (21) 8 AIR 1921 Sind 77 (77) : 15 Sind L R 34 : 66 Ind Cas 5 (DB), *Pessumal v. Gaganmal*.
- (37) 24 AIR 1937 Rang 408 (410) : 1937 Rang L R 127 : 173 Ind Cas 604, *J. N. Ezekiel v. E. Mordecai*. (Drawing of one single line across stamp is as effectual as a signature or date.)
- (12) 15 Oudh Cas 58 (61) : 15 Ind Cas 202 (DB), *Mohammad Amir Mirza Beg v. Kedar Nath*. (Three lines drawn across stamp each of which extended on to the paper on which the stamp was affixed.)
- (21) 8 AIR 1921 Lah 120 (120) : 60 Ind Cas 559 (DB), *Kishori Lal Banarsi Das v. Ram Lal Tekchand*. (The drawing of lines across adhesive stamp is as effectual a mode of cancellation as any other, provided that from what has been done the intention to cancel is clearly apparent.)
- (08) 1908 Pun Re No. 108, page 498 (500) : 1908 Pun W R 207, *Piran Ditta v. Mangal Singh*. (Drawing of two lines.)
- (28) 15 AIR 1928 Bom 80 (89) : 108 I. C. 465, *In re Tata Iron and Steel Co. Ltd.* (28 Bom 432 not followed.)
- [But see (04) 28 Bom 432 (433) : 6 Bom L R 436 (DB), *Virabhadrapa v. Bhimaji*. (1888 Bom P J 361, relied on. NOTE.—This view does not seem to be good law as the case has not been followed in AIR 1928 Bom 80, a subsequent decision of the same High Court, and also by the other High Courts.)
- (12) 16 Ind Cas 96 (97) (Mad), *Solanalai Mudaliar v. Vadamalai Muthiran*.]
7. (28) 15 AIR 1928 Bom 80 (89) : 108 Ind Cas 465, *In re Tata Iron and Steel Co. Ltd.*
- (25) 12 AIR 1925 Rang 209 (210) : 3 Rang 39 : 88 Ind Cas 933, *Kolai Sai v. Balai Hajam*. (Cross mark made by an illiterate executant.)
- (35) 22 AIR 1935 Lah 716 (717) : 161 Ind Cas 487 (DB), *Hafiz Allah Baksh v. Dost Mohammad*. (Drawing of diagonal lines.)
- (20) 7 AIR 1920 Lah 374 (375) : 1919 Pun Re No. 148 : 54 Ind Cas 976, *Mela Ram v. Brij Lal*. (Do.)
8. (36) 23 AIR 1936 Oudh 176 (176) : 161 Ind Cas 150 (DB), *G. A. Heven v. Sultan Khan*.
- (38) 25 AIR 1938 Lah 505 (506) : 181 Ind Cas 115, *Punjab Zamindars Bank v. Mohammad Shaffi*.
- (06) 3 All L Jour 326 (327) : 1906 All W N 95, *Kirparam v. Barumal*.



the person cancelling the stamp would amount to an effectual cancellation even though the date of cancellation is not written on the stamp. Conversely, it has been held that the mere writing of the date in the form of figures on the face of a stamp is an effectual cancellation.<sup>9</sup>

Under the English Stamp Act, 1891 (54 and 55, Vict. c. 39) S. 8 of which is in similar terms, it has been held that the writing of the name or the date alone or other marks such as lines or cross-mark on the stamp is a sufficient cancellation.<sup>10</sup>

In *Viale v. Michael*,<sup>11</sup> a case under the English Stamp Act of 1870 (33 and 34, Vict. c. 97), cancellation by means of a stamping machine was held to be sufficient. It is conceived that a similar mode of cancellation will be sufficient under this section.

Where the person executing the document is illiterate, the writing of the name of the executant on his behalf and under his direction by the scribe on the adhesive stamp is a sufficient compliance with the section.<sup>12</sup>

Where a person wrote his name close to an adhesive stamp on its left side and continued the line which formed the upper portion of the writing in the Hindi character across the face of the stamp and immediately against the right hand side thereof continued his writing, it was held that the stamp was effectually cancelled.<sup>13</sup>

In *Hafiz Allah Baksh v. Dost Mohammad*,<sup>14</sup> a pronote bore four one anna stamps out of which three were cancelled with the inscription of certain words. The fourth stamp bore only a long straight line in fainter ink which did not extend over the margin of the stamp. It was held that as it was possible to use the fourth stamp a second time in spite of the line drawn across it, it was not cancelled in an effectual manner.

In the undermentioned case,<sup>15</sup> there was affixed on a promissory note one stamp duly signed on and there was only an impression of the other stamp which was alleged to be missing and which was cancelled by a single line. It was held that even assuming that the pronote had such a stamp it could not be deemed to be duly cancelled.

Where the stamp on an instrument bore only a small part of the first letter of the executant's signature consisting of a slightly curved line it was held that there was no sufficient cancellation.<sup>15a</sup>

See also the undermentioned case<sup>16</sup> where the drawing of some blue pencil lines on the stamp was held to be insufficient.

Where several adhesive stamps which together make the required amount of stamp duty chargeable on a document, are affixed to it, all such stamps should be cancelled in an effectual manner.<sup>17</sup>

9. ('42) 29 AIR 1942 Sind 130 (132): I L R (1942) Kar 56: 201 Ind Cas 711 (DB), *Motiram Nathumal v. Mangharam Tirathdas*.

10. (1902) 71 L J Ch 766 (767): 18 T L R 650, *M. Mullen v. Alfred Hickman Steamship Ltd.*

11. (1874) 30 L T 463 (463).

12. ('31) 18 AIR 1931 All 57 (57): 52 All 489: 127 Ind Cas 527, *Thakari Mallah v. Ram Tahal Tewari*.

Also see S. 12 Note 6.

13. ('19) 6 AIR 1919 All 196 (199): 41 All 169: 52 Ind Cas 974 (DB), *Mahadeo Kori v. Sheoraj Ram*.

14. ('35) 22 AIR 1935 Lah 716 (717): 161 Ind Cas 487 (DB).

15. ('34) 21 AIR 1934 Rang 364 (365): 153 Ind Cas 531, *U. Kyaw v. Hari Dutt*.

15a. ('90) 14 Bom 102 (111) (DB), *S. A. Ralli*

*v. Carawalli*.

16. ('12) 16 Ind Cas 96 (97) (Mad), *Solanalai Mudaliar v. Vadamalai Muthiran*.

17. ('40) 27 AIR 1940 Oudh 308 (309): 188 Ind Cas 184, *Babu Lal v. Durga Prasad*. (Pronote stamped with two stamps one of which bore a thumb impression and the other was not cancelled at all.)

(37) 24 AIR 1937 Rang 408 (410, 411): 1937 Rang L R 127: 173 Ind Cas 604, *J. N. Ezekiel v. Mordecai*. (Four stamps affixed in a square—Upper two stamps cancelled by signature—Lower left stamp was cancelled by an irregular line across it and extending only 1/4th inch on the right lower stamp—Held fourth stamp was not duly cancelled.)

(29) 16 AIR 1929 Rang 270 (271): 126 I. C. 538, *Tun Hlaing v. Ma Kha Bu*. (One of the two stamps not cancelled at all.)



Share transfer stamps shall be cancelled by means of a punch perforating the word "cancelled" or its abbreviations or the initials of the company or by any other method specially approved by the Government; otherwise, the transferring company will be liable to penalty prescribed under S. 63 of the Act.<sup>18</sup>

**5. Time of cancellation.**—This section directs that cancellation of adhesive stamps should be made at the time it is affixed if the instrument has already been executed or at the time of its execution. Cancellation of stamps is generally made at the time of execution. But in the case of instruments executed outside British India which are provided for in Ss. 18 and 19, cancellation may be made subsequently when they are received in India. A deed is duly stamped if the stamp is affixed and cancelled at the time of execution or if, having been at any time previously affixed, it is cancelled at the time of execution.<sup>1</sup> Where a promissory note is signed first and the stamp is affixed and cancelled immediately after the signature, the stamping and cancellation must be deemed to be made at the time of execution.<sup>2</sup>

In the undermentioned case<sup>3</sup> where the stamp affixed by the drawer on a hundi was left uncanceled but was subsequently cancelled by the payee at the time of taking delivery of the hundi, it was held that the cancellation was made at the time of *execution*. The decision is under the Act of 1879 under which the word 'execution' was not defined. The decision is not good law under the present Act.

Under S. 47 a person to whom any bill of exchange or promissory note chargeable with a duty of one anna is presented for payment unstamped, may affix the necessary stamp and cancel the same. Such instrument will then be deemed to be duly stamped.

As to the effect of not cancelling the stamp at the proper time see Note 7.

See also Notes on S. 17 as to the admissibility of external evidence to show the time of stamping documents.

**6. Cancellation by whom to be made.**—The cancellation of the stamp apparently should be made by the executant or the person affixing it; but as it is a mere mechanical operation to prevent the stamp from being used again it is sufficient if it be done by his directions express or implied.<sup>1</sup> Thus an illiterate person can direct the scribe of the instrument or any one else to sign across the adhesive stamp on his own behalf. Such signature will be quite as good as his own signature for the purposes of cancellation.<sup>2</sup>

**7. Effect of non-cancellation—Sub-section (2).**—Where a document chargeable with duty bears a stamp which has not been cancelled *at all* or which has not been cancelled in an *effectual manner* as required by the section, the document will, under sub-s. (2), be deemed to be unstamped and by virtue of S. 35, it will be inadmissible in evidence as not being duly stamped.<sup>1</sup> Similarly where several adhesive

18. ('31) Beng S M Vol. I p. 22.

Section 12—NOTE 5

1. ('95) 19 Bom 635 (638, 639) (DB), *Bhawanji Harbhum v. Devji Punja*.

2. ('01) 24 Mad 259 (261) (DB), *Suriy Mull v. Hudson*.

Also see S. 17 Note 7.

3. ('95) 19 Bom 635 (638) (DB), *Bhawanji Harbhum v. Devji Punja*.

Section 12—NOTE 6

1. ('95) 19 Bom 635 (638) (DB), *Bhawanji Harbhum v. Devji Punja*.

2. ('31) 18 AIR 1931 All 57 (57): 52 All 489: 127 Ind Cas 527, *Thakari Mallah v. Ram Tahal Tewari*.  
Also see Note 4.

Section 12—NOTE 7

1. ('21) 8 AIR 1921 Pat 318 (319): 60 Ind Cas 652, *Brahma Deo Rai v. Ram Kishun Mahton*.



stamps which together make the required amount of stamp duty chargeable on a document are affixed to it, each of such stamps must be cancelled in an effectual manner. If one of the stamps is not cancelled the document will be regarded as unstamped so far as such stamp is concerned and therefore the document will be inadmissible in evidence for insufficiency of stamp.<sup>2</sup>

Where a document bears an adhesive stamp and the stamp is cancelled not at the time at which it is required to be cancelled under sub-s. (1) but is cancelled subsequently, can such a document be regarded as unstamped within sub-s. (2)? There is a conflict of opinions on this point.

In *Krishna Kumar v. Mt. Jagpati Kuar*,<sup>3</sup> a decision of the Patna High Court, Courtney-Terrell C. J. observed as follows :

"The wording of sub-s. (2) makes it clear that a document is to be deemed unstamped if, when the Court looks at the same it finds that it has not been cancelled so that it cannot be used again, and the criterion of cancellation is the appearance of the stamp. If the stamp is in such a condition that it cannot be used again then it has been cancelled and the document cannot be treated as unstamped. The sub-section has nothing to do with the penalties for failing to cancel the stamp. That is provided by s. 63 and I cannot find anything in this section which prevents the document from being used in evidence if, when it is presented to the Court, it is in fact cancelled within the meaning of sub-s. (2), and that does not mean that it must have been cancelled at some particular time anterior to its presentment in evidence but merely refers to the condition of the stamp at the time it is so presented."

Similarly, in *W. M. Ezekiel v. Mrs. Soul Sofaer*,<sup>4</sup> a decision of the Rangoon High Court, Robert C. J. observed as follows :

"What the s. 12 aims at is clearly the prevention of imperfect cancellation and consequent loss to the revenue. Section 12 (1) (b) says that whoever executes any instrument on any paper bearing an adhesive stamp shall at the time of execution cancel the same so that it cannot be used again, and a penalty is imposed by s. 63. Section 12 (2) makes it clear that documents which are

('03-04) 2 Low Bur Rul 103 (104), *Maung Ba Kywan v. Ma Kye Kyee*. (Non-cancellation.)  
 ('32) 19 AIR 1932 Mad 693 (695) : 139 Ind Cas 486, *Alimane Sahiba v. Subbarayudu*. (Do.)  
 ('12) 16 Ind Cas 834 (835) (DB) (Lah), *Sundar Das v. Peoples Bank of India*. (Do.)  
 ('12) 1912 Pun Re No. 18 : 14 Ind Cas 512 (512), *Peoples Bank of India Ltd. v. Abdul Karim*. (Improper cancellation.)  
 ('26) 13 AIR 1926 All 359 (359) : 48 All 332 : 93 I. C. 63, *Choteylal v. Girraj Kishore*. (Non-cancellation.)  
 ('06) 28 All 298 (299, 300) : 3 All L Jour 25 (DB), *Barnarsi Prasad v. Fazal Ahmad*. (Do.)  
 [See also (1882) 7 App Cas 172 (176, 177) : 51 LJPC 50 : 46 LT 435 : 30 WR (Eng) 964, *Vernon v. Meera*. (Mere writing of date without any initials is not proper cancellation within S. 12 (2) of the Straits Settlement Ordinance VIII of 1873—Document can be admitted in evidence on payment of penalty.)]

2. ('40) 27 AIR 1940 Oudh 308 (309) : 188 Ind Cas 184, *Babulal v. Durga Prasad*.  
 ('29) 16 AIR 1929 Rang 270 (271) : 126 Ind Cas 538, *Tun Hlaing v. Ma Kha Bu*.  
 ('37) 24 AIR 1937 Rang 408 (410, 411) : 1937 Rang L R 127 : 173 Ind Cas 604, *J. N. Ezekiel v. E. Mordecai*. (One of the four stamps on a pro-note had only a line 1/4 inch long which formed part of the signature—Held stamp was not effectually cancelled.)  
 ('37) 24 AIR 1937 Rang 413 (415) : 178 Ind Cas 144, *Mary K. Niemeyer v. Ebrahim Moosaji*.  
 ('34) 21 AIR 1934 Lah 606 (607) : 153 Ind Cas 1076 (DB), *Sohanlal v. Raghunath Singh*. (One of the four stamps not cancelled in any way.)  
 ('33) 20 AIR 1933 Lah 148 (149) : 145 Ind Cas 154 (DB), *Khazan Shah v. Atta Ullah*. (One out of four stamps not cancelled at all.)  
 Also see S. 2 (11) Note 4.  
 3. ('37) 24 AIR 1937 Pat 73 (75) : 16 Pat 84 : 167 Ind Cas 152 (DB)  
 4. ('37) 24 AIR 1937 Rang 392 (394) : 1937 Rang L R 196 : 172 Ind Cas 601.



deemed to be unstamped are those on which a stamp is not cancelled so that it cannot be used again; no other documents are to be deemed unstamped by this sub-section."

The Bombay High Court has, on the other hand, held that a cancellation of one anna adhesive stamp on a hundi made by the holder at the time of receiving payment from the drawee is not valid as it is not made at the time when the hundi is executed and therefore the hundi should be treated as unstamped.<sup>5</sup>

It is submitted with respect that the decisions of the Patna and Rangoon High Court appear to be more in consonance with the wording of sub-s. (2). The words "has not been cancelled so that it cannot be used again" occurring in sub-s. (2) do not imply that the Legislature intended to penalise a person who has failed to cancel an adhesive stamp at the time prescribed by sub-s. (1), by treating the instrument as unstamped.

It may be noted here that in the Bombay decision referred to above if the hundi had been unstamped and the drawee had affixed the stamp and cancelled it, then the hundi would have been considered as good and valid with regard to stamp duty, under the provisions of S. 47. It would lead to an anomaly if that decision is accepted as correct.

As to whether a suit on original consideration is maintainable in case the document which is the basis of suit is not admitted in evidence for want of cancellation of stamps, see Notes on S. 35.

**8. Effect of due cancellation.**—The effect of due cancellation is that the instrument is treated as duly stamped and the instrument can be admitted in evidence in a Court of law. (See S. 35.) Once an instrument is admitted in evidence, no objection as to its admissibility can be raised at any stage of the same suit or proceeding.<sup>1</sup> (See S. 36.) Thus, no objection can be raised in appeal as to the admissibility of an instrument on the ground of improper cancellation when the document has been admitted in the first Court.<sup>2</sup> Where, however, a promissory note is admitted in evidence in an *ex parte* trial, its admissibility can be questioned in a *de novo* trial commenced after the setting aside of the *ex parte* decree. Section 36 has no application to such a case as the proceeding is not the same.<sup>3</sup>

See also Notes on section 36.

**9. Due cancellation—Onus of proof.**—Where it appears from the face of an instrument that the stamp on it is affixed and cancelled at the date of execution, in the absence of evidence to the contrary it may be presumed that the stamp was duly affixed and cancelled. The burden of proving that the cancellation was made at a date later than that of execution is on the party who alleges it.<sup>1</sup>

**10. Presumption as to stamp.**—Under S. 89 of the Evidence Act the Court shall presume that every document called for and not produced after notice to produce, was stamped in the manner required by law.

5. ('25) 12 AIR 1925 Bom 520 (520) : 90 Ind Cas 689 (DB), *Dayaram v. Chandulal*.

Section 12—NOTE 8

1. ('37) 24 AIR 1937 Pat 73 (74) : 16 Pat 84 : 167 Ind Cas 152, *Krishna v. Mt. Jagapati Kuer*.

2. ('12) 15 Oudh Cas 58 (61) : 15 Ind Cas 202, *Mohammad Amir Mirza Beg v. Babu Kedar Nath*.

('08) 1908 Pun Re No. 108, p. 498 (500) : 1908 Pun WR 207, *Piran Ditta v. Mangal Singh*.

3. ('12) 16 Ind Cas 96 (97) (Mad), *Solanalai Mudaliar v. Vadamalai Muthiran*. Also see S. 36 Note 4.

Section 12—NOTE 9

1. ('37) 24 AIR 1937 Rang 392 (394) : 1937 Rang LR 196 : 172 Ind Cas 601 (DB), *W. M. Ezekiel v. Mrs. Saul Sofaer*.

(1868) 18 LT 904 (904) : 37 LJCP 146 : 16 WR (Eng) 1128 : 3 CP 286, *Bradlaugh v. De Rin*.

(1874) 31 LT 372 (374) : 23 WR (Eng) 89, *Marc v. Rouy*.



Where a hundi has been lost, a presumption arises under S. 118 (f) of the Negotiable Instruments Act, 1881, that the hundi is duly stamped. This includes a presumption that the stamp was duly cancelled.<sup>1</sup>

Where it appears that an instrument has been stamped, but the stamp is obliterated, it may be presumed to have been of sufficient amount.<sup>2</sup>

See also Note 35 on Preamble.

11. Use of more than one stamp paper for same instrument.—See Section 10 Note 16 and Section 13 Note 4.

12. Additional sheets of plain paper.—See Section 10 Note 17 and Section 13 Note 5.

**\*13. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.**

Instruments stamped with impressed stamps how to be written.

#### Synopsis

1. Legislative changes.

1a. English law.

2. "That the stamp may appear on the face of the instrument."

3. Position of writing on the stamp paper.  
See Note 2.

4. Use of several stamp papers.

5. Use of plain sheets of paper.

6. Effect of non-compliance with section.

1. **Legislative changes.**—There was no provision corresponding to the present section in the Acts prior to 1879. Section 12 of Act I of 1879 was word to word the same as the present section.

1a. **English law.**—The corresponding provision in the English Stamp Act, 1891 (54 & 55 vict., Ch. 39) was S. 3 (1) which ran as follows :

"Every instrument written upon stamped material is to be written in such manner, and every instrument partly or wholly written before being stamped is to be so stamped, that the stamp may appear on the face of the instrument, and cannot be used for, or applied to any other instrument written upon the same piece of material."

Section 7 (1) of the Repealed Act of 1870 (33 & 34 vict., Ch. 97) contained the same provision.

2. **"That the stamp may appear on the face of the instrument."**—This section does not apply to adhesive stamps. It requires the stamp to appear "on the face of the instrument" and so it is necessary that at least a part of the instrument should be written on the side of the paper which bears the stamp impression. Attaching blank stamp paper to instruments written on plain or insufficiently stamped paper is therefore illegal.<sup>1</sup>

\*[1879—S. 12. Cf. (1870) 33 & 34 Vict., c. 97—S. 7 (1) ; (1891) 54 & 55 Vict., c. 39—S. 3 (1).]

#### Section 12—NOTE 10

1. ('30) 17 AIR 1930 Sind 4 (8) : 126 Ind Cas 741, *Atmaram Mohanlal & Sons v. Notan das Devi Dayal*.  
Also see S. 2 (11) Note 12.

2. (1842) 3 Q B 687 (689) : 61 R R 352 (354) 12 L J Q B 36, *Doe d. Fryer v. Coombs*.

#### Section 13—NOTE 2

1. ('34) Pun S M Part 1-B Ch. 3 p. 5.



In *Dowlatram v. Vitho*<sup>2</sup> a document commenced on the side other than that on which the stamp was impressed and ended on the side on which the stamp was impressed. The question was whether the provisions of s. 12 of the Act of 1879 (corresponding to present S. 13) that "the instrument shall be written in such a manner that the stamp may appear on the face of it" were complied with. The Full Bench of the Bombay High Court answered the question in the affirmative. It was observed :

"That section....seems....to contemplate two objects—1, that the stamp should not be defaced or made illegible ; 2, that the writing should not be so distant from the stamp as to admit of its being used again for another instrument—for instance, by cutting off the part of the paper previously written upon, and writing a fresh instrument upon the portion left blank....In ordinary legal parlance, when the face of a deed or document is mentioned, no particular side or sheet of the parchment or paper, on which the deed or document is written, is thereby indicated. The last line on the second side, or if the deed or document consist of more sheets than one, the last line on the last side or sheet, if part of the text or body of the instrument, is deemed to be as much upon the face of it as the first line on the first side or sheet. Ordinarily if the instrument be of sufficient length, both sides of the paper are written upon. The 12th section of the Act I of 1879 does not say that the instrument must commence on the side on which the stamp is impressed, or that only one side may be written upon. The imposition of such excessive and minute details would be pitfalls to the unwary, and would, by frequently invalidating documents, press harshly upon the illiterate classes, and overthrow thousands of honest transactions without producing any such advantageous result in the form of revenue to the State as would compensate it for the discontent which would be occasioned. The Legislature has avoided such stringent details, and seems to us to have satisfied itself by legislating against defacement of the impressed stamp, and against such a mode of penning the document as would admit of that stamp being used for, or applied to, any other instrument."

The interpretation put upon the expression "face of the instrument" seems to be reasonable.

The other construction that the expression should be taken to mean the beginning of an instrument and that every document should commence on the side of the paper which bears the stamp is not correct. It does not suit a case where more than one stamp paper are used for an instrument. It cannot be said that the section was intended for a case where a single stamp paper was used and that the Legislature did not contemplate the case of more than one impressed stamp. As will be seen from the provisions of S. 10 (2) (b) the Legislature did contemplate the use of more impressed stamps than one for an instrument. If "the face of the instrument" is taken to be the beginning portion of it then it is not possible to give effect to the provisions of the section in a case where more than one impressed stamp are used, because it is not possible to begin the instrument on every sheet used. If, on the other hand, the construction put by the Full Bench is accepted there is no difficulty and the provisions of the section are complied with by writing a portion of the instrument on each sheet. Rule 7 (1) of the Stamp Rules, 1925, also supports this view. But it may be noted that though writing on the back side of the stamp paper is not prohibited by the section the use of the side which bears the stamp is, as will be seen from the provisions of R 7 (2) of the Stamp Rules, favoured,<sup>3</sup> because

2. ('81) 5 Bom 188 (194) (FB).

3. ('84) 7 Mad 176 (181) (FB), Reference under | Stamp Act, S. 46.



by following that method effect can be given to the provisions of the section without fail and without any difficulty. (See also Note 5.) An instrument which begins on the back side of the stamp paper and ends there will not, it is submitted, be in accordance with the provisions of the section. See also Note 5.

3. Position of writing on the stamp paper.—See Note 2.

4. Use of several stamp papers.—The section itself does not *in terms* provide for a case where more than one stamp paper are used to make up the amount of stamp duty. Rule 7 (i) of the Stamp Rules, 1925, provides for such a case. It says :

“Where two or more sheets of paper on which stamps are engraved or embossed are used to make up the amount of duty chargeable in respect of any instrument, a portion of such instrument shall be written on each sheet so used.”

Thus where a bill of exchange is written on three stamp papers aggregating to the full stamp duty payable thereon, it is duly stamped.<sup>1</sup> The object of the rule is clearly in furtherance of the provisions of the section that the stamp paper should not be used for or applied to any other instrument. If some of the sheets are kept blank they can be removed and used for a new document. An instrument offending against the rule which is to be regarded as part of the Act cannot be said to be duly stamped.<sup>1a</sup> But even in the absence of the rule the result would be the same because an instrument written in the above fashion would not be in compliance with the provision of the section that the stamp must appear on the face of the instrument.<sup>2</sup>

Rule 5 (a) of the Rules made in 1882 (published in Notification No. 1288, dated the 3rd March 1882) required that “when any instrument is to be written on an impressed sheet, if the amount of duty with which such instrument is chargeable does not exceed one hundred rupees, a single sheet shall be used unless, where the application for the required stamp is made at a treasury, the treasury officer or where such application is made to a stamp vendor, the vendor certifies that he is unable to furnish a single stamp of the required value.” Where a hundi was drawn on two papers sewn together, each bearing a hundi stamp of twelve annas, instead of on one stamp of Re. 1-8-0, the instrument was held not duly stamped.<sup>3</sup> The rule was omitted in the rules made in 1891 (by Notification No. 2170, dated the 22nd May 1891).

#### Section 13—NOTE 4

1. ('19) 6 AIR 1919 Cal 235 (238) : 51 Ind Cas 88 (DB), *Biswanath Bhattacharjee v. Govinda Chandra*.

Also see S. 2 (11) Note 9, S. 10 Note 16 and Art. 13 Note 4.

1a. ('14) 1 AIR 1914 Mad 358 (358) : 23 Ind Cas 110, *Mohanlal Kanai Lal v. Kesrimull Chordiya*.

[See also ('32) 19 AIR 1932 Lah 582 (582) : 13 Lah 800 : 142 Ind Cas 729, *Har Narain Sahib Ram v. Bihari Lal Chiranji Lal*. (Instrument not written in compliance with R. 7 (1) of Stamp Rules—Instrument admitted in evidence by lower Court—Held, question could not be raised in appeal in view of S. 36, Stamp Act.)]

[See however, ('70) 13 Suth W R 41 (43) (DB), *Dunne v. Ameeroonissa Khatoon*. (Security bond executed in 1869 engrossed on eight anna stamp and threaded to other stamps—

Held, although rules for purpose of revenue administration required the Stamps not to be put in the way in which they had been put in yet it was a mere technical objection not affecting the merits of the case.)]

Also see S. 2 (11) Note 9 and S. 35 Note 3.

2. ('21) 8 AIR 1921 Pat 317 (317) : 60 Ind Cas 385 (DB), *Ram Narain v. Lachmi Prasad*.

('29) 16 AIR 1929 All 254 (255) : 51 All 530 : 116 Ind Cas 293 (DB), *Kundan Lal v. Bhikaridas Ishwardas*.

('81) 5 Bom 188 (196) (FB), *Dowlattram v. Vitho Radhoti*.

('34) Pun S M Part 1-B Ch. 3 p. 5.

[See also (1727) 93 E R 803 (803) : 2 Str 716, *Rex v. Reeks*. (See the interpretation of this case in 5 Bombay 188 at p. 196.)]

Also see S. 10 Note 4.

3. ('86) 1886 Pun Re No. 73, page 157 (158) (DB), *Samad Mir v. Brij Lal*.

Also see S. 10 Note 16.



**5. Use of plain sheets of paper.**—The section does not provide for a case where the stamp paper is insufficient to contain the whole of the writing. Rule 7 (2) of the Stamp Rules, 1925, provides for such a case. It provides that,

“Where a single sheet of paper, not being paper bearing an impressed hundi-stamp, is insufficient to admit of the entire instrument being written on the side of the paper which bears the stamp, so much plain paper may be subjoined thereto as may be necessary for the complete writing of such instrument :

Provided that in every such case a substantial part of the instrument shall be written on the sheet which bears the stamp before any part is written on the plain paper subjoined.’

The language of the rule clearly indicates that only one side of the stamp paper, i.e., the side which bears the stamp will be used for writing and not the reverse side. The section, however, does not itself prohibit writing on the reverse side<sup>1</sup> and it has been held that the rule also while it favours the writing of an instrument on the side which bears the stamp, does not prohibit writing on the reverse side and therefore an instrument written on both sides of the stamp paper is duly stamped.<sup>2</sup>

Rule 5 (e) of the rules made under the Act of 1879 contained a further proviso “That the part of the instrument written on the plain paper must be attested by the signatures or marks of all the persons executing the document and the witnesses to the same.” This part of the rule was held to be *ultra vires* being more stringent than the Act warranted<sup>3</sup> and was repealed by Notification No. 2170, dated the 22nd May 1891.

A final decree for partition is an instrument of partition as defined in S. 2 (15) and is chargeable with stamp duty under Art 45. The provisions of the section will apply to such a decree. But through mistake or otherwise the decree is sometimes not drawn up on the non-judicial stamp as required by law. It has been held that in such a case the decree can be validated with retrospective effect from the date when it was originally drawn up by attaching the stamp paper subsequently supplied by the decree-holder, to the decree already drawn up after defacing it and writing the cause title and the names of the parties on it.<sup>4</sup> Rule 7, however, does not apply to such a case ; nor do any other provisions of the Stamp Act. As observed in *Rafi-ud-din v. Latif Ahmad*<sup>5</sup> such a contingency was not contemplated by the framers of the Stamp Act. This is done under the inherent powers of the Court as saved by S. 151 of the Civil Procedure Code.

Attaching *blank stamp paper* to instruments written on plain or insufficiently stamped papers is illegal under this section as it requires the instrument to be written on a stamped paper so that the stamp may appear on the face of the instrument.

**6. Effect of non-compliance with section.**—Section 15 of the Act provides that an instrument written in contravention of the provisions of this section shall be deemed to be unstamped. Thus even while bearing the required stamp the instrument is deemed to be unstamped. Being unstamped it cannot be said to be duly stamped and therefore cannot be admitted in evidence or acted upon under

#### Section 13—NOTE 5

1. ('81) 5 Bom 188 (194) (FB), *Dowlatram v. Vitho Radhoti*.

Also see S. 10 Note 17.

2. ('84) 7 Mad 176 (181) (FB), *Reference under Stamp Act*, S. 46.

3. ('84) 8 Mad 532 (540) (FB), *Reference under Stamp Act* 1879. (Turner, C. J.,

contra.)

Also see S. 2 (11) Note 9, S. 10 Note 17 and S. 75 Note 2.

4.†('10) 7 Ind Cas 94 (96) (DB) (Cal), *Rafi-ud-din v. Latif Ahmad*.

('35) 22 AIR 1935 Cal 125 (125) : 154 Ind Cas 458 (DB), *Jogesh Chandra v. Mohini Mohan*.

Also see S. 2 (15) Note 15.

5. ('10) 7 Ind Cas 94 (96) (DB) (Cal).



S. 35.<sup>1</sup> But by paying the duty and the penalty the instrument may be duly stamped and made admissible in evidence.<sup>2</sup>

Where the instrument in such a case is admitted by the lower Court the question as to its admissibility cannot be raised in appeal in view of the provisions of S. 36.<sup>3</sup>

See also Notes on S. 15.

**\*14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written :**  
Only one instrument to be on same stamp.

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

#### SYNOPSIS

- |   |  |
|---|--|
| 1. "No second instrument."                    | 4. Agreement contained in letters. See Notes on S. 35. |
| 2. Alteration of document.                    |  |
| 3. Document altering terms of prior document. | 5. Endorsements upon instruments.                      |

1. "No second instrument."—This section forbids a second instrument requiring stamp being written upon a stamp paper on which one instrument has already been written.<sup>1</sup> The second instrument written in contravention of this section must be deemed to be unstamped. (See S. 15). As a consequence, all the provisions applicable to unstamped instruments will come into operation in regard to such an instrument. A material alteration in an instrument rendering a new stamp necessary contravenes this section. (See Note 2).

By virtue of S. 15, only the second instrument written in contravention of this section shall be deemed to be unstamped. The first instrument remains perfectly unaffected.<sup>1a</sup> For instance, where a deed of release was written on the back of a duly stamped conveyance, it was held that the conveyance was duly stamped.<sup>2</sup>

\*[1879—S. 13.]

#### NOTE 6

- 1.†('14) 1 AIR 1914 Mad 358 (358) : 23 Ind Cas 110, *Mohanlal Kanailal v. Keshrimull Chordia*.
- ('29) 16 AIR 1929 All 254 (255) : 51 All 530 : 116 Ind Cas 293 (DB), *Kundan Lal v. Bhikari-das Iswardas*.
- ('21) 8 AIR 1921 Pat 317 (317) : 60 Ind Cas 385 (DB), *Ram Narain v. Kachi Prasad*.
- ('86) 1886 Pun Re No. 73, page 157 (158) (DB), *Samad Mir v. Brij Lal*.
2. ('85) 8 Mad 532 (540) (FB), *Reference under Stamp Act, S. 46*.  
[See also ('33) Mad S M p. 25. (Citing BP 3331, 17th December 1881—Document written on first sheet and second left blank—Duty and penalty realised—On recommendation for remission of penalty and refund of value of unused stamp, the Board of Revenue sanctioned the former and ordered destruction of unused stamp paper.)]

3. ('32) 19 AIR 1932 Lah 582 (582) : 13 Lah 800 : 142 Ind Cas 729, *Har Narain Sahib Ram v. Bihari Lal Chiranjilal*.

#### Section 14—NOTE 1

1. ('93) 17 Bom 687 (688) : 1892 Bom P J 347 (FB), *Pralhad Vithu v. Lakshman*.
- ('28) 15 AIR 1928 Rang 263 (264) : 114 Ind Cas 289, *Myo Maung v. Ma Myin*. (Promissory note—Alteration of principal and rate of interest—Alteration held made the instrument new and required fresh stamp.)
- ('42) 29 AIR 1942 Pesh 43 (44) : 201 Ind Cas 165, *Fazal Karim v. Mohd. Karim*.
- 1a. ('36) 14 Rang 29 (40) (DB), *Joharmal Beharilal v. R.M.P.M. Chettyar Firm*. (Stone v. Metcalfe, (1815) 171 E R 69, followed.)
2. ('88) 11 Mad 40 (41) (FB), *Reference under Stamp Act, S. 46*. (Release could be validated by payment of the deficient stamp duty and penalty.)



In order that this section may apply, there must be more than one instrument written on the same stamp paper. Where there is only one instrument, this section will not apply, although the matters dealt with in the instrument are distinct and so capable of being carried out by separate instruments. Such an instrument will come under S. 5.

Nor will this section apply, where the second instrument does not require any stamp.

For the meaning of the expression "instrument," see Notes on section 2 (14).

The rule contained in the section is subject to the exceptions mentioned in the proviso. (See Note 5.) The illustrative cases given below bear both upon the body of the section and the proviso.

### *Illustrative cases.*

#### **Conveyance and release.**

A deed of release was endorsed on the back of a deed of conveyance. The conveyance bore a sufficient stamp, but the release was unstamped. It was held that the release contravened this section and it could only be admitted in evidence by the payment of deficient stamp duty and penalty.<sup>3</sup>

#### **Sale-deed and conveyance.**

An endorsement on the back of a sale-deed by which A sold property to B, showing that the property had been transferred to C, was held to amount to a conveyance of property and was inadmissible in evidence for want of stamp.<sup>4</sup>

#### **Sale-deed and consent by undivided member.**

On a sale-deed executed by A, B, the undivided nephew, endorsed his consent to the sale. It was held that the endorsement of consent and the conveyance were several instruments employed to complete a transaction within the meaning of S. 6 of Act I of 1879 (now S. 4) and the endorsement ought to have been written on a separate stamp paper.<sup>5</sup>

#### **Money bond and transfer.**

An endorsement of transfer written on the back of a simple money bond requires stamp.<sup>6</sup>

#### **Promissory note and agreement.**

A, B and C made a joint and several promissory note for £100 payable to D or order on demand. A memorandum endorsed on the note at the same time stated that the note was given to secure floating advances, not exceeding £100. It was held that the memorandum could not be read in evidence without an agreement stamp.<sup>7</sup> It is not clear how the memorandum could be admitted in evidence even if it had been stamped, since it is not a matter covered by the proviso.

#### **Bonds by principal and surety.**

In a bond engrossed on a stamp paper of sufficient value, the contract of the principal was written first and after his signature, followed the contract of the surety

3. ('88) 11 Mad 40 (41) (FB), *Reference under Stamp Act, S. 46.*

4. ('42) 29 AIR 1942 Pesh 43 (44) : 201 Ind Cas 165, *Fazal Karim v. Mohd. Karim.*  
[See ('69) 3 Beng LR (App) 30 (31) (DB), *Tetai Abom v. Gagai Gura Chawa.* (The transfer of an under-tenure, endorsed upon the back of the tenant's pottah, is not admissible in evidence, unless it be stamped as though it were a separate deed of conveyance.)]

5. ('88) 13 Bom 281 (284) (FB), *In the matter of Hanmapa.*

6. ('93) 17 Bom 687 (688) : 1892 Bom P J 347 (FB), *Pralhad Lakshman v. Vithu.*  
[See also ('34) 21 AIR 1934 Oudh 344 (344) : 151 Ind Cas 532 (DB), *Jang Bahadur v. Bhagoo.*]

7. (1845) 69 R R 709 (712) : 14 L J Ex 328 : 5 L T (OS) 267 : 153 E R 507, *Cholmeley v. Darley.* (Endorsement was not part of the note but independent agreement.)



signed by the latter. It was held that the bond constituted only *one instrument* and therefore the deed was not open to objection under this section.<sup>8</sup>

Grant of annuity by Hindu widow and consent by subsequently adopted son.

A, a Hindu widow, passed to B, a document on plain paper, granting B an annuity charged on the revenues of a certain village. A then adopted C and the latter made an endorsement on the deed to the effect that he consented to act according to the sanad. The question arose whether there were two instruments. It was held that on adoption the gift by the widow became inoperative and there was only one instrument, and it should be stamped with a single stamp as a gift.<sup>9</sup>

For instances of alterations, see Note 2.

**2. Alteration of document.**—If an alteration be made, in a material part of an instrument, after its execution is entirely complete, by a party thereto but without the consent of the party or parties liable thereunder, the effect is to vacate the deed.<sup>1</sup> The policy of the law is that a man shall not take the chance of committing a fraud and when that fraud is detected recover on the instrument as it was originally made.<sup>2</sup>

Where, however, the instrument is altered in a material part, after its execution, with the consent of the party to be bound, that does not itself avoid the deed.<sup>3</sup> But the effect of the material alteration is to make it in substance a new instrument rendering a new stamp necessary.<sup>4</sup> As a result, this section is contravened and the new instrument would be deemed to be unstamped under s. 15.<sup>5</sup>

So long, however, as an instrument is *in fieri* (in course of accomplishment) it is not completely executed and the stamp on the instrument is not occupied. An alteration in that stage, therefore, will not make a new stamp necessary.<sup>6</sup>

No further stamp is required if the alteration is immaterial or is made to correct a mistake or in furtherance of the original intention of the parties.<sup>7</sup> The reason is that in such a case, the original instrument is, *in substance*, not altered and remains unaffected.

Further, the writing on an instrument may not amount to an alteration of the instrument *itself*.<sup>8</sup> In such a case there is no question of the material alteration

8. ('81) 5 Bom 188 (191, 193) (FB), *Dowlattram v. Vitho*.

('33) Mad S M p. 25. (Citing B P 3018, 6th December 1882.)

('33) Mad S M p. 25. (Citing B P 580, 11th September 1890.)

Also see S. 2 (5) Note 15.

9. ('83) 7 Bom 194 (196) : 7 Ind Jur 425 (FB), *In re Bhavanibhai*.

Also see Art. 33 Note 2.

Section 14—NOTE 2

1. Halsbury, *Laws of England*, Vol. 10, pages 411, 412.

(1822) 24 R R 522 (527) : 106 E R 1337, *Downes v. Richardson*.

(1882) 9 Q B D 555 (561) : 51 L J Q B 401 : 47 L T 146 : 30 W R (Eng) 932, *Suffell v. Bank of England*.

2.\*('36) 14 Rang 29 (37) (DB), *Joharmal Beharilal v. R. M. P. M. Chettyar Firm*. (Quoting Jessel, M. R., in *Suffell v. Bank of England*, (1882) 9 Q B D 555 and other authorities.)

3. Halsbury, *Laws of England*, Vol. 10, page 412.

('36) 14 Rang 29 (37) (DB), *Joharmal Beharilal v. R. M. P. M. Chettyar Firm*.

(1822) 24 R R 522 (526) : 106 E R 1337, *Downes v. Richardson*.

[See also ('27) 44 AIR 1927 Bom 13 (15) : 50 Bom 656 : 99 Ind Cas 489, *Cox and Co. v. Pestonji and Co.*]

4. Halsbury, *Laws of England*, Vol. 24, p. 718.

('19) 6 AIR 1919 Low Bur 45 (45) : 50 Ind Cas 517, *Tribeni v. Sahu*.

5. ('28) 15 AIR 1928 Rang 263 (264) : 114 Ind Cas 289, *Maung Myo v. Ma Myin*.

6. Halsbury, *Laws of England*, Vol. 24, p. 719 (1822) 24 R R 522 (527) : 106 E R 1337, *Downes v. Richardson*.

7. Halsbury, *Laws of England*, Vol. 24, p. 719.

8.\*('36) 14 Rang 29 (41) (DB), *Joharmal Beharilal v. R. M. P. M. Chettyar Firm*.

(Endorsement on promissory note agreeing to alter terms of the agreement as to time of payment, rate of interest, etc. The promissory note itself is not altered. The alteration in the agreement was not made by "any



of an instrument. It is in each case a question of fact whether the instrument itself has been altered and a question of law whether the alteration is a material one.<sup>9</sup>

What alterations are material is a question which has frequently been considered by English Courts. The result is briefly summarized by Halsbury as follows:

"A material alteration is one which varies the rights, liabilities, or legal position of the parties ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed or reduces to certainty some provision which was originally unascertained and as such void, or may otherwise prejudice the party bound by the deed originally executed."<sup>10</sup>

The fact that the alteration instead of being on the face of the instrument is upon the back of it, does not make any material distinction.<sup>11</sup>

No alteration, however, in an endorsement on the instrument, which forms no part of the instrument, will render a new stamp necessary. The reason is that by such endorsement, the instrument remains unaffected and nothing is added to or taken from it.<sup>12</sup>

In *Pestonji & Co. v. Cox & Co.*,<sup>13</sup> certain clerks in a Bank made a memorandum of the due date in the corner of a bill of exchange in the ordinary course. The time for payment was subsequently extended by agreement between the parties to the deed, and the marginal note was altered by the clerks accordingly, without any alteration in the bill as originally drawn. It was held by their Lordships of the Privy Council that the instrument was not altered and so no new stamp was necessary. Viscount Sumner observed:

"As to the material alteration, the answer is that the bill itself was not altered at all. Of course, if the due date on the face of the bill had been altered, the alteration would have been material but what was done did not, in fact, affect the bill, nor was it done with any such intention. The date formed no part of the bill, nor did its alteration affect the contract. It was a mere

addition, interlineation or erasure." (See *Pigot's case*, (1614) 11 Co Rep 26b: 77 E R 1177.)

(1836) 150 E R 419 (421): 5 L J Ex 143, *Brill v. Crick*. (Promissory note payable on demand executed by way of security if promisee succeeded in certain action—Endorsement on the note after it was signed, stating that the note was given upon certain condition mentioned in a prior agreement—Held endorsement was to be considered as merely a marking of the note for the purpose of identification, and not as the incorporating of the agreement, so as to render the note an agreement or a conditional promise—Parke B: "This endorsement never was intended to alter the legal effect of the note. It was made for the purpose of earmarking the note only and to show that it was the note referred to in the agreement.") (1857) 65 R R 395 (396, 397): 26 L J Ex 314: 5 W R (Eng) 489: 157 E R 1, *Fanshawe v. Peet*. (Words of acceptance on bill of exchange—Different date from that given in the bill for payment mentioned in the acceptance—This was held not to alter the instrument.)

9. ('36) 14 Rang 29 (41) (DB), *Joharmal*

*Beharilal v. R. M. P. M. Chettyar Firm*.

10. Halsbury, *Laws of England*, Vol. X, pages 411, 412.

[See also ('40) 27 AIR 1940 PC 160 (163): 67 Ind App 318: ILR (1940) All 625: ILR (1940) Kar (PC) 287: 190 Ind Cas 135 (PC), *Nathulal v. Mt. Gomti Kuar*.]

11. (1827) 31 R R 190 (192): 108 E R 720, *Reed v. Deere*.

12.†('28) 15 AIR 1928 PC 231 (233, 234): 52 Bom 589: 52 Ind App 353: 113 Ind Cas 124 (PC), *Pestonji H. & Co. v. Cox & Co.* (AIR 1927 Bom 13: 50 Bom 656 affirmed. It was observed that the decision in AIR 1925 Bom 187: 49 Bom 351 must be considered to be wrongly decided unless the fact of re-acceptance, after the time for payment had been extended, introduced a sufficient distinction.) (1882) 10 Q B D 30 (35): 47 L T 408: 31 W R (Eng) 475, *Garrard v. Lewis*.

[See also ('70) 5 Beng L R 103 (105): 14 Suth WR (OC) 38 (DB), *Chunder Kant Mookerjee v. Kartick Chunder Chaile*.]

13. ('28) 15 AIR 1928 PC 231 (233, 234): 55 Ind App 353: 52 Bom 589: 113 Ind Cas 124 (PC).



docket for office purposes. If a slip of paper, with the date on it, had been pinned on to the bill the two holes made by the pin in the paper would have been no less liable to be called an alteration.....

"As to the stamp objection, no second instrument, that is, no bill of exchange, was written on the old stamped paper at all. The old instrument remained unaffected, and nothing was added to or taken from it."

In the case of a bill of exchange or a promissory note, the burden of proving that the alteration has not rendered a new stamp necessary, lies on the party relying on the instrument.<sup>14</sup>

### *Illustrative cases.*

#### **Alteration of time of payment.**

A bill of exchange was drawn payable 21 days after date. It was afterwards altered and made payable 51 days after date, and was again altered to 21 days after date. The date was also brought forward. It was held that this was a distinct transaction and required a new stamp.<sup>15</sup>

In an instalment mortgage bond, a condition making the whole sum payable upon default in payment of any instalment was inserted after its execution and the rate of interest was doubled. It was held that the alterations were material.<sup>16</sup>

After a bill of exchange had been drawn and indorsed, but before it was accepted the drawee altered it postponing the time of payment. It was held that before acceptance, the bill of exchange was perfect and the alteration was material.<sup>17</sup>

A bill of exchange was drawn by A upon B, payable at three months. On delivery of the bill to B for acceptance, B requesting that four months may be substituted for three months and afterwards by A's assent, the alteration was made, making the bill payable at four months. It was held that as the alteration was made before the bill was complete, a new stamp was not requisite.<sup>18</sup>

A bill at three months which was drawn by A and accepted by B for A's accommodation was indorsed and sent by post by A to C for value. C returned the bill insisting upon having one at two months instead. A thereupon altered the bill, by making it payable at two instead of three months and again sent it to C. There was no evidence that B knew of the alteration at the time, but there was evidence to show that he assented to its being treated as a two months' bill. It was held that it was no more than as if all the three parties had met and before the bill had passed out of the hands of the payee, the alteration had been made with the acceptor's assent. The alteration therefore must be considered to have been made when the instrument was *in fieri*.<sup>19</sup>

#### **Alteration in date of instrument.**

The date on a surety bond was altered after it was complete. It was held that the alteration was material.<sup>20</sup>

14. (1838) 47 R R 563 (567, 568) : 7 L J Q B 144 : 112 E R 819, *Knight v. Clements*. (Bill of exchange originally drawn payable 3 months after date altered to 2 months bill.)  
 (1818) 171 E R 657 (657) : 2 Stark 313 (313), *Johnson v. Duke of Marlborough*. (Bill of exchange—Alteration of the date of the bill.)  
 (1827) 33 R R 646 (648) : 6 L J K B 334, *Bishop v. Chambre*. (Promissory note—Alteration of date and alteration made on top of original date.)

15. (1794) 101 E R 302 (302) : 5 Term Rep 537 (538), *Bowman v. Nichol*

16.\*('86) 9 Mad 399 (411, 412, 413, 418) : 10

Ind Jur 409 (FB), *Christachalu v. Kribasayya*.

17. (1815) 171 E R 58 (58) : 4 Camp 179 (180), *Outhwaite v. Lunt Ley*.

18. (1816) 171 E R 527 (527) : 1 Stark 452 (453), *Kennerlay v. Nash*.

19. (1849) 137 E R 322 (323) : 7 C B 812 (814), *Tarleton v. Shinglar*.

20. ('26) 13 AIR 1926 Bom 491 (492) : 98 Ind Cas 721 (DB), *Namdev Jayram v. Swadeshi Vyapari Mandali Ltd.* (Per Madgaonkar J. : "It is not merely the actual final effect on a consideration of all the facts and the law in each case that decides whether the alteration is material.")



The date on a money bond was altered after it was executed. It was held that the deed was altered in a material part.<sup>21</sup>

An alteration of the date of a bill of exchange, after issue, is a material alteration requiring new stamp.<sup>22</sup> Thus, an alteration of the date of a bill of exchange, after issue, whereby the payment was accelerated, was held to be a material alteration.<sup>23</sup> So also, an alteration of the date of a bill after issue, with the consent of the other party, so as to postpone the payment for 20 days, was held to be a material alteration requiring fresh stamp.<sup>24</sup>

An alteration of the date of an accommodation bill before its being issued, was held not to render a fresh stamp necessary, the bill having been altered before it was issued.<sup>25</sup>

An alteration in the date of a bill of exchange with the assent of the acceptor, before issue, was held not such a re-issuing of the bill as to render a new stamp necessary.<sup>26</sup>

A bill of exchange was drawn by mistake as dated on the corresponding day of the preceeding month instead of the day when drawn, and carried by the payee to the drawee for acceptance, who accepted it noting the mistake. Afterwards, the payee upon communication with the drawer, altered the date to the day when drawn and acquainted the drawee with what he had done. It was held that the alteration of the date was in furtherance of the original intention of the parties and to correct a mistake. Therefore no new stamp was required.<sup>27</sup> Similarly, the correction of a clerical error in the date of a promissory note is not a material alteration.<sup>28</sup>

#### Alteration of sum payable.

A lent Rs. 50 to B and obtained a promissory note for the same. A further advance of Rs. 150 was taken by B two days later. The promissory note for Rs. 50 was altered by scoring Rs. 50 and inserting Rs. 200. The rate of interest was also altered to a higher rate. It was held that the alterations were material and required a new stamp.<sup>29</sup>

A bond which was originally executed for Rs. 70 was altered when in the plaintiff's possession to a bond for Rs. 100. It was held that there was a material alteration in the instrument.<sup>30</sup>

An alteration of the amount in an accommodation bill before its issue does not make it a new bill, requiring fresh stamp.<sup>31</sup>

See also the undermentioned case.<sup>32</sup>

21. ('89) 12 Mad 239 (240, 241) (DB), *Govindasami v. Kuppusami*.

22. (1812) 104 E R 900 (902) : 15 East 412, *Bathe v. Taylor*.

23. (1791) 2 R R 399 (408) : 100 E R 1042, *Master v. Miller*.

24. (1807) 170 E R 883 (884) : 1 Camp 79, *Cordwell v. Martin*.

25. (1822) 24 R R 522 (527, 528) : 106 E R 1337, *Downess v. Richardson*. (An accommodation bill is not issued until it is in the hands of the person who is entitled to treat it as a security available in law.)

26. (1827) 5 L J (OS) C P 90 : 12 Moore C P 281, *Leykariff v. Ashford*.

27. (1817) 105 E R 1196 (1196) : 6 M & S 142 (143), *Jacob v. Hart*.

[See also (1824) 27 R R 727 (728) : (1824) Ry & M 37, *Brutt v. Picard*. (A bill having been dated 1822 instead of 1823, the agent

of the drawer and acceptor, to whom it had been given to be delivered to the endorsee, without their knowledge or consent, corrected the mistake. Held that such alteration did not vacate the bill.)

28. ('27) 14 AIR 1927 Cal 612 (613, 614) : 103 Ind Cas 629, *In re Jagodia Cotton Mills Ltd.*

29. ('28) 15 AIR 1928 Rang 263 (264) : 114 Ind Cas 289, *Maung Myo v. Ma Myin*.

30. ('23) 10 AIR 1923 Nag 295 (295) : 19 Nag L R 79 : 74 Ind Cas 20, *Pandurang v. Kishan*.

31. (1894) 2 Q B 660 (666) : 63 L J Q B 649 : 71 L T 86, *Scholfield v. Londisborough*.

32. (1847) 72 R R 258 (261) : 9 Q B 306 : 115 E R 1290 : 15 L J Q B 343, *Hamelin v. Bruck*. (Alteration in pursuance of the intention of parties—Bill of exchange—Drawee accepting it for smaller sum than



### Alteration of rate of interest.

In a promissory note when executed by the defendant in favour of the plaintiff, the space for interest was left blank. After three months, the parties agreed that interest at 6 per cent. should be charged and insertion of this rate was made accordingly. It was held that the insertion of a rate not agreed upon by the parties when the note was first made, was a material alteration of the instrument requiring new stamp.<sup>33</sup>

A customer deposited a certain sum of money with a banker and received a note, by which the banker promised to pay the principal at 10 days' sight with 3 per cent. interest. The banker paid the interest on the note, but at the same time told the customer that he would not, in future, pay more than 2½ per cent. interest and altered the terms of the note accordingly. It was held that the instrument required a new stamp as the alteration was material.<sup>34</sup>

Where after the execution and attestation but before registration of a mortgage bond, it was found that certain lines were interpolated, containing a stipulation as to payment of compound interest, it was held that the alteration was material.<sup>35</sup>

An alteration, after execution, in the rate of interest payable under a mortgage bond, to carry out the original intention of the parties, is not a material alteration.<sup>36</sup>

### Alteration of place of payment.

D accepted a bill without any qualification. The original bill was payable at his own house in King's Road, Chelsea; but after the delivery of the bill to P, D altered the description by making it "payable at J. Bland's, Great Surrey Street, Blackfriars." It was held that the alteration was immaterial.<sup>37</sup>

### Alteration in statement of consideration.

A promissory note for £100 payable to plaintiff or order and originally expressed to be "for value received generally" was altered the next day upon the suggestion of one of the parties by the addition of the words "for the good-will of the lease and trade of F. K. deceased." It was held that the alteration rendered a new stamp necessary such words being material and not having been originally intended to be inserted and omitted by mistake.<sup>38</sup>

In a joint and several promissory note by three persons, after two of the makers had signed, the third, before he signed, caused the words "on account of Club held at Mr. D. D.'s" to be introduced after "value received." It was held that as the note was not complete, until the third had signed it, the alteration did not render a fresh stamp necessary.<sup>39</sup>

### Alteration in names of executants.

After the execution of the bond by the first defendant, the name of the second defendant was added as an executant. It was held that the alteration was material.<sup>40</sup>

that named—Sum originally named altered to that which drawee accepted—Not clear by whom or at what time or place the alteration had been made—Held that the alteration was not material and required no new stamp.)

33. ('19) 6 AIR 1919 Low Bur 45 (45, 46) : 50 Ind Cas 517, *Tribeni v. Sahu*.

[See also ('82) 6 Bom 371 (374) : 6 Ind Jur 523 (DB), *Oodeychand Boodaji v. Baskar Jagannath*. (Promissory note—Rate of interest in one the clauses altered—Held material alteration although the clause so altered was a penal clause to which, even if unaltered, the Court would not give effect.)]

34. (1827) 108 E R 778 (779) : 6 L J (OS) K B

3 *Sutton v. Toomer*.

5. ('26) 13 AIR 1926 Cal 831 (831, 833, 834) : 53 Cal 418 : 96 Ind Cas 97 (DB), *Parbati Charan v. Amarendra Nath*.

36. ('17) 4 AIR 1917 Cal 811 (811, 812) : 44 Cal 154 : 35 Ind Cas 182 (DB), *Ananda Mohan v. Ananda Chandra*.

37. (1833) 149 E R 711 (712) : 3 L J Ex 2, *Walter v. Cubley*.

38. (1809) 10 R R 349 (350) : 103 E R 839, *Knill v. Williams*.

39. (1842) 63 R R 848 (849, 850) : 1 Dowl (NS) 802, *Wright v. Inshaw*.

40. ('06) 33 Cal 812 (817) : 3 Cal L Jour 363, *Gour Chadra v. Prassanna Kumar*.



Addition of name as maker if made in a promissory note after the note was issued, is a material alteration.<sup>41</sup>

A promissory note payable to C was originally signed by A. B's name as maker was added subsequently. It was held that if it were part of the bargain between C and A that B should sign the note as principal, the alteration did not render a new stamp necessary. But if B came in upon an afterthought, the note to be binding would require an additional stamp.<sup>42</sup>

#### Alteration of number on bank-note.

An alteration of the number of a Bank of England note, so as to simulate another note for the same amount, was held to be an alteration of the essential part of the note.<sup>43</sup>

#### Alteration of words "or order."

Mutilation of a promissory note, which caused the words "or order" to disappear from the note, is a material alteration.<sup>44</sup>

Where a bill of exchange was put into circulation by indorsement, though it wanted the words "or order", the insertion of those words by the drawer was held to be merely a correction of a mistake and in furtherance of the original intention of the parties.<sup>45</sup>

The addition of the words "or order" in a promissory note with the consent of the party bound, was held not to require a new stamp, as the alteration was made in furtherance of the original intention of the parties and to correct a mistake, and no new stamp was requisite.<sup>46</sup>

#### Alteration in transfer of shares.

A deed of transfer of shares was executed by A, the seller, with the name of B inserted as the purchaser. Before any execution of the deed by B, (under the relevant Act the deed was to be executed by both the seller and the buyer) it was arranged that C instead of B should be the purchaser. The name of B was then struck out and that of C substituted. A re-executed the altered deed. It was held that the deed was so far complete as between A and B that it could not operate as a conveyance to C without a new stamp.<sup>47</sup>

#### Deed of release of witness—Release of one witness altered into release of two.

A release of a witness having been executed by a defendant was given to the defendant's attorney. During the trial, it was altered by inserting the name of another witness and changing the terms so as to make it a release of both witnesses and was re-executed by the defendant before delivery to either witness. It was held that the instrument was *in fieri* at the time of the second execution and therefore no new stamp was necessary.<sup>48</sup>

#### Alteration in marriage settlement.

Necessary parties were assembled to execute a marriage settlement. After the sole conveying party had executed the deed, a material alteration was suggested and made in it. The deed was then executed by the other parties and re-executed by the conveying party. It was held that the execution of the deed was *in fieri*

41. (1855) 103 R R 377 (382, 383) : 119 E R 412 : 3 W R (Eng) 460 : 24 L J Q B 285, *Gardner v. Walsh* (Question whether note was issued or not in point of law not decided.)

42. (1816) 17 R R 667 (668) : Hail (NP) 474 (475), *Clark v. Blackstock*.

43. (1882) 9 Q B D 555 (564, 568) : 51 L J Q B 401 : 47 L T 146 : 30 W R (Eng) 932, *Suffell v. Bank of England*.

44. (1816) 3 AIR 1916 Mad 284 (285, 286) : 38 Mad 746 : 21 Ind Cas 445 (DB), *Lakshmmal*

*v. Narasinha*.

45. (1800) 170 E R 603 (604) : 3 Esp 246 (248), *Kershaw v. Cox*.

46. (1839) 52 R R 269 (270) : 113 E R 324 : 9 L J Q B (NS) 26, *Byron v. Thompson*.

47. (1841) 133 E R 916 (930) : 10 L J C P 133, *London & Brighton Ry. Co. v. G. F. Fairclough*.

48. (1834) 3 L J Ex 285 (288) : 149 E R 1023, *Spicer v. Burgess*. (*Quaere* : Whether a release to two witnesses requires two stamps.)



when the alteration took place and the alteration did not require a new stamp.<sup>49</sup>

**Alteration in area mentioned.**

Alteration of a lease-deed by an erasure, which excluded a portion of the land inserted by mistake before all the parties had executed the deed, was held not to be a material alteration.<sup>50</sup>

**Security bond—Addition of another obligor.**

The addition of another obligor after a security bond had been executed but before the sheriff had accepted it, with the assent of the sheriff and prior obligors, does not make a new stamp necessary.<sup>51</sup>

**Note altered into bill.**

A and B for a debt due to C, agreed to give him a bill of exchange to be drawn by A and accepted by B. Instead of this, they sent him a promissory note made by the one and indorsed by the other, which C immediately returned to be altered according to the agreement. It was held that everything continued *in fieri* till after the alteration as it had not been negotiated and the instrument so altered was a valid bill of exchange without a fresh stamp.<sup>52</sup>

**Insertion of name of additional arbitrator.**

The insertion of the name of a second arbitrator in reference to arbitration before the sole arbitrator named had accepted the reference was held to be no material alteration requiring a new stamp, as the reference was incomplete.<sup>53</sup>

**Alterations in proxy.**

Proxies with printer's error were returned duly stamped. An accidental omission of the date of meeting was supplied by a person having authority, before the proxies were lodged. It was held that the proxies were duly stamped and did not require a new stamp.<sup>54</sup>

**Addition of words "on demand" to promissory note.**

A promissory note expressed no time for payment and while it was in the possession of the payee, the words "on demand" were added without the assent of the maker. In an action by the payee against the maker, it was held that as the alteration only expressed the effect of the note as it originally stood, the alteration was immaterial.<sup>55</sup>

**Alterations in warrant of attorney.**

An interlineation in a warrant of attorney made by consent of both the parties concerned after execution, stating the party to be "now a prisoner in the custody of the sheriff of K," was not an alteration in a material part of the instrument, so as to render a new stamp necessary.<sup>56</sup>

49. (1833) 149 E R 589 (590) : 2 L J Ex 249, *Jones v. Jones*.

50. (1827) 130 E R 714 (717, 718) : 4 Bing 123, *Hall v. Chandless*.

51. (1816) 105 E R 1033 (1034) : 5 M & S 223, *Matson v. Booth*.

52. (1811) 170 E R 1285 (1286) : 3 Camp 1 (3), *Webber v. Maddocks*.

53. ('14) 1 AIR 1914 Sind 90 (92) : 8 Sind L R 302 : 29 Ind Cas 602, *Shamdas Teumal v. Khimanmal Chandumal*.

[See also ('24) 11 AIR 1924 Cal 794 (795) : 82

Ind Cas 416, *Kali Charan v. Mani Mohan*.]

54. (1897) 1 Ch 1 (6) : 66 L J Ch 17 : 75 L T 317 : 45 W R (Eng) 86, *Earnest v. Loma Gold Mines Ltd.* (Affirming *Earnest v. Loma Gold Mines Ltd.*, (1896) 2 Ch 572.)

[See also (1907) 1 Ch 318 (321) : 76 L J Ch 184 : 96 L T 361, *Sadgrove v. Bryden*.]

Also see Art. 52 Note 3.

55. (1868) 3 Q B 573 (576, 579) : 37 L J Q B 201 : 16 W R (Eng) 1045, *Aldous v. Carnwell*.

56. (1842) 134 E R 71 (73) : 11 L J C P 199, *Hartly v. Manson*.



Alteration in names of attesting witnesses.

An alteration in the names of attesting witnesses in a mortgage-deed, which did not require attestation, was held not to be a material alteration.<sup>57</sup>

See also the undermentioned cases.<sup>58</sup>

**3. Document altering terms of prior document.**—There are *obiter dicta* in the undermentioned case<sup>1</sup> that an agreement varying the terms of a prior instrument and endorsed on the instrument itself may be admitted in evidence if duly stamped or on payment of duty and penalty. It is submitted that this view is in direct conflict with this section and is not correct. But such an endorsement will not be an

57. ('86) 12 Cal 313 (316, 317) (DB), *Mohesh Chunder v. Kamini Kumari*. (7 Bom 418 dissented from.)

[See also ('91) 15 Bom 44 (45) (DB), *Venkatesh v. Baba Subraya*. (Bond—Addition of a witness's signature subsequent to execution—No material alteration.)]

58. ('78) 1 Bom 320 (331, 332) (DB), *Anandji Visram v. Nadiad Spinning & Weaving Co.* (Defendant signed his name to a Memorandum of Association of a projected company as having taken four shares. But the Memorandum of Association which was later registered differed from the former in omitting in its fourth clause the word "yearly" before the word "profits" on which the company was to pay a certain commission to the secretary, agents and the treasurers and in adding to its sixth clause a provision empowering the company by a special resolution in general meeting to sub-divide the shares—Held that the first was not, but the second was, a material alteration.)

(1837) 7 L J Ex 34 (38) : 150 E R 1064, *Bacon v. Simpson*. (Agreement to sell—Indorsement upon the agreement extending the time for its performance from 1st to 6th January—Held, to be a fresh agreement and required a new stamp.)

('67) 3 Bom H C R (OCJ) 9 (11, 12), *Eastern Financial Association (Limited) v. Pestanji Cursetji Shroff*. (Promissory note payable on demand—Endorsement with the words "Due on...." above the date of the note made on the same day it was signed Held, note was payable otherwise than on demand.)

(1809) 170 E R 1130 (1131) : 2 Camp 205 (207), *Leeds v. Lancashire*. (Upon an instrument in the form of a joint and several promissory note, signed by A, B and C, there was an endorsement written at the time of signing it, stating that the note was taken as a security for all balances as A might happen to owe to the promisee and the note should be in force within six months. It was held that the instrument in question was only an agreement and not a promissory note, and required an agreement stamp.)

(1840) 133 E R 474 (478) : 9 L J C P 298, *Taylor v. Parry*. (By a memorandum between A and B, it was agreed that a question of boundary should be referred to some different surveyor residing at a distance. By a further memorandum written on the same

paper, at a subsequent date, it was agreed that the question should be settled by C. It was held that the two memoranda constituted one agreement, requiring only one stamp.)

(1815) 171 E R 41 (42) : 4 Camp 127 (129), *Hartley v. Wilkinson*. (Instrument purporting on the face of it to be a promissory note payable absolutely for the price of goods, but having an endorsement upon it stating that it was given on condition that if any dispute arose as to the sale of the goods, it should be void. It was held that as the endorsement had been written before the note was signed, it must be taken to be part of it, and that as the note was to be void on any dispute arising, the payment was conditional only, and the instrument was not a promissory note.)

(1810) 104 E R 184 (185, 186) : 12 East 471 (475), *Cole v. Parkin*. (Bill of sale of ship, by mistake, misreciting the certificate of registry—Correction of mistake—Held, no new stamp was necessary upon such re-execution.)

(1858) 175 E R 687 (688) : 1 F & F 192, *Barker v. Aston*. (Bill of sale assigning certain horses as security and other horses as might be substituted for them, provided the names and descriptions of substituted horses were endorsed—Held that the endorsements did not require an additional stamp, being only for the purpose of identification.)

(1871) 13 Eq 281 (285) : 41 L J Ch 73 : 25 L T 782 : 22 W R (Eng) 166, *Bourdin v. Green Wood*. (L in 1846 promised to pay, three months after date, to B or to C, his wife, £500. B died in 1863 leaving C surviving. There was an endorsement on the note in L's handwriting of his name and the year 1866. C died in 1868. It was held that the endorsement was not intended to make a new note and required no new stamp.)

(1828) 172 E R 462 (463) : 3 C & P 374 (375), *Sherrington v. Jermyn*. (A handed a promissory note to C, B, the payee, being present. But before it was given to the payee it was altered by the consent of all the parties. It was held that this giving it to third person was not an issuing of it, and that it did not require a new stamp.)

#### Section 14—NOTE 3

1. ('36) 14 Rang 29 (41) (DB), *Joharmal Beharilal v. R. M. P. M. Chettyar Firm*.



alteration of the instrument *itself* so as to render it unenforceable without a fresh stamp.<sup>2</sup> An oral agreement to vary the terms of the original written agreement cannot be proved. The recording of such oral agreement on the original instrument renders the instrument in no way void or liable to be stamped afresh.<sup>3</sup>

See also Notes on s. 4.

4. Agreement contained in letters.—See Notes on Section 35.

5. Endorsements upon instruments.—The proviso to this section exempts certain endorsements from the operation of this section and permits them to be written on a stamp paper on which an instrument has already been engrossed. The exemption, however, extends only to “any endorsement which is duly stamped or is not chargeable with duty.” Where, therefore, the endorsement is chargeable with duty and is not duly stamped, the endorsement will be in contravention of the principal clause of this section and it must be deemed to be unstamped under S. 15.<sup>1</sup>

In *In the matter of Hanmappa*,<sup>2</sup> an opinion was expressed that in the case of endorsements in contravention of this section, the power of the Court to set the matter right by the enforcement of a penalty as provided elsewhere in the Act, did not apply. It is submitted that the view is not correct.<sup>3</sup>

It is to be noted that under the proviso, the endorsements that are permitted can only relate to certain matters, namely, transfer of the right created by the instrument and acknowledgment of receipt of the money or goods secured by the instrument. If the endorsement relates to any other matter it will not be permissible though it may bear the required stamp.

For instances of those endorsements which are not liable to stamp duty, see Exemption (a) to Art. 53 and Exemptions to Art. 62.

Instrument written contrary to section 13 or 14 deemed unstamped.

**\*15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.**

1. Legislative changes.—There was no provision similar to the present section in the Acts prior to 1879. Section 14 of Act I of 1879 was as follows:

“Every instrument written in contravention of s. 12 or 13 shall be deemed to be unstamped.”

Sections 12 and 13 of the Act of 1879 corresponded to the present Ss. 13 and 14.

2. Scope of the section. This section deals with the consequences of the breach of the provisions of Ss. 13 and 14. It says that an instrument written in contravention of the above mentioned sections shall be deemed to be unstamped. There is a similar provision in sub-s. (2) of s. 12 in respect of an instrument bearing

\*[1879—S. 14.]

2. ('36) 14 Rang 29 (41) (DB), *Joharmal Beharilal v. R. M. P. M. Chettyar Firm*.

3. ('36) 14 Rang 29 (40) (DB), *Joharmal Beharilal v. R. M. P. M. Chettyar Firm*.

Section 14—NOTE 5

1. ('92) 17 Bom 687 (688): 1892 Bom P J 347 (FB), *Pralhad Lakshman v. Vithu*. (Where a simple money-bond executed on an impressed stamp paper was transferred by endorsement on the back thereof, held that the endorsement required a stamp and

could be stamped under S. 34 of Act (I of 1879).)

('88) 11 Mad 40 (41) (FB), *Reference under Stamp Act, S. 46*.

('89) 13 Bom 281 (284, 285) (FB), *In the matter of Hanmappa*.

2. ('89) 13 Bom 281 (285) (FB), (Doubted in 17 Bom 687.)

3. ('92) 17 Bom 687 (688): 1892 Bom P J 347 (FB), *Pralhad Lakshman v. Vithu*.



an adhesive stamp which has not been cancelled as required by sub-s. (1) of s. 12. The observations in the undermentioned case<sup>1</sup> that Ss. 13 and 14 (Ss. 12 and 13 of Act I of 1879) are the only two cases in the Act in which, though the proper amount of duty has been paid, yet, the instruments are held not duly stamped, are incorrect, because, as stated above, S. 12 is also one of such cases.

An instrument which is to be deemed to be unstamped under this section is not "duly stamped" and hence is not admissible in evidence under S. 35.<sup>2</sup>

**3. Power to condone defect.**—In the undermentioned Bombay decision<sup>1</sup> an opinion was expressed that an instrument written in contravention of s. 14 (S. 13 of Act I of 1879) should not be stamped by the Collector—perhaps on the ground that Chapter IV of the Act would not apply to an instrument which is only constructively unstamped by force of S. 15 and not actually so. The decision cannot, however, be considered to be good law in view of the later Full Bench decision of the same High Court<sup>2</sup> where, as also in the undermentioned Madras decision,<sup>3</sup> it has been held that even in cases under Ss. 13 and 14 (Ss. 12 and 13 of Act I of 1879) the defect can be remedied by paying the necessary duty and penalty under the provisions of Chapter IV and thus the document may be duly stamped and made admissible in evidence. The specific provision in S. 39, sub-s. (2) (S. 36 of Act I of 1879) for refund and in the proviso to S. 40, sub-s. (1) (S. 37 of Act I of 1879) for remission of whole of the penalty by the Collector, paid in respect of instruments written in contravention of Ss. 13 and 14 show that the defect is curable by payment of the duty and the penalty under the provisions of Chapter IV of the Act.

The proviso to R. 5 (e) of the Stamp Rules of 1882 required that the part of an instrument written upon plain sheets of paper attached to a stamp paper must be attested by the parties executing and the witnesses to the document. In the undermentioned case<sup>4</sup> the question was whether an instrument contravening the proviso could be considered not duly stamped. A Full Bench of the Madras High Court held that the instrument was duly stamped within the meaning of the definition in S. 3 (10) of Act I of 1879 (corresponding to S. 2 (11) of the present Act) notwithstanding the fact that it was written in contravention of the proviso. One of the reasons given in support of the decision was that the rule did not provide that an instrument written in contravention of the rule shall be deemed unstamped as S. 14 of Act I of 1879 (present S. 15) did in respect of Ss. 12 and 13 of the Act (Ss. 13 and 14 of the present Act) and that the rule did not provide any means of making the instrument properly stamped. It is submitted that this reasoning does not seem to be correct. An instrument written in contravention of the proviso could be said to be not written in accordance with the law in force in British India when such instrument was executed and therefore not "duly stamped" within the meaning of the definition in S. 3 (11) of Act I of 1879. Further it appears that the above rule was made in furtherance of the provisions of S. 12 of Act I of 1879. An instru-

#### Section 15—NOTE 2

1. ('85) 8 Mad 532 (539) (FB), *Reference under Stamp Act, S. 46.*
2. †('19) 6 AIR 1919 Low Bur 45 (45): 50 Ind Cas 517, *Tribeni v. Sahu*. (Instrument written in contravention of S. 14.)
- ('28) 15 AIR 1928 Rang 263 (264): 114 Ind Cas 289, *Maung Myo v. Myin*. (Do.)
- ('92) 17 Bom 687 (688): 1892 Bom P J 347 (FB), *Pralhad Lakshman v. Vithu*. (Instrument written in contravention of S. 13 of Act I of 1879—Held, it must be deemed to be unstamped under S. 14 and then S. 34

of the Act and its provisos which apply to all unstamped instruments whether actually or only constructively so must come into operation.)

#### Section 15—NOTE 3

1. ('89) 13 Bom 281 (284) (FB), *In the matter of Hanmappa*.
2. ('92) 17 Bom 687 (688): 1892 Bom P J 347 (FB), *Pralhad Lakshman v. Vithu*.
3. ('85) 8 Mad 532 (539) (FB), *Reference under Stamp Act, S. 46.*
4. ('85) 8 Mad 532 (539) (FB), *Reference under Stamp Act, S. 46.*



ment written in contravention of a rule made in furtherance of s. 12 could also be deemed unstamped under s. 14 of the Act of 1879. In the same decision the above proviso was also held to be *ultra vires* and was repealed subsequently. (See S. 10 Note 17 and s. 13, Note 5.)

**\*16.** Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument, by endorsement under the hand of the Collector or in such other manner (if any) as the <sup>a</sup> [collecting Government] may by rule prescribe.

a. Substituted for the words "Governor-General in Council" by A. O.

### Notification.

All functions of the Central Government under, or in relation to, s. 16 have been entrusted to the Provincial Government.—See Gazette of India, Finance Department (Central Revenues) Notification No. 9, dated 13-11-1937.

### Synopsis

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|-------------------------------------|--|
| 1. Legislative changes.             | 4. Instruments falling under this section. |
| 2. Analogous law.                   | 5. "Collector."                            |
| 3. Scope and object of the section. | 6. Manner of denoting payment.             |

**1. Legislative changes.**—This section was first introduced in the Stamp Act of 1879, s. 15 of which was as follows :

"Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument in such manner as the Governor General in Council may, by rule, prescribe."

Rule 16 of the Notification No. 2170 of 21st May 1891 prescribed that the payment of duty should be denoted by endorsement under the hand of the Collector.

In the present Act the provision contained in R. 16 has been incorporated in the section itself.

The words "collecting Government" were substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

**2. Analogous law.**—Section 11 of the English Stamp Act of 1891 (54 & 55 Vict., c. 39) provides as follows :

"Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of the last-mentioned duty shall, upon application to the Commissioners and production of both the instruments, be denoted upon the first-mentioned instrument in such manner as the Commissioners think fit."

\*[1879—S. 15 ; 1869—Sch. II Art. 16, proviso ; 1862—Sch. A Art. 3, proviso and Art. 37. Cf. (1870) 33 & 34 Vict., c. 97—S. 14 ; (1891) 54 & 55 Vict., c. 39—S. 11.]



**3. Scope and object of the section.**—In certain cases, the duty payable on an instrument, or its exemption from duty depends upon the duty paid on another instrument. The production of the second instrument would, therefore, be necessary in order to determine the duty payable on the first instrument, or its exemption from duty. The object of the section is to save the parties the trouble of producing the second instrument by providing that the payment of duty on the second instrument may be denoted on the first instrument by endorsement under the hand of the Collector. For this purpose, the section requires that an application in writing must be made to the Collector and that both the instruments must be produced before him.

An application made to a registering officer, who is a Collector for the purposes of this section, to have the stamp duty denoted on an instrument does not require to be stamped.<sup>1</sup>

The section does not make it obligatory on the parties to make an application, but if such an application is made, the Collector must act under this section.

For particular instruments falling under this section, see Note 4.

**4. Instruments falling under this section.**—In the following cases, the duty payable on an instrument depends upon the duty paid on another instrument :

- (1) Subsidiary instruments chargeable under S. 4.
- (2) Counterpart or duplicate chargeable under Art 25.
- (3) A lease under the proviso to Art. 35, when executed subsequent to, and in pursuance of an agreement to lease which is stamped as a lease.
- (4) An instrument of partition under proviso (c) to Art. 45, when executed in pursuance of an order for effecting partition which is stamped as an instrument of partition.
- (5) An instrument of settlement under the proviso to Art. 58, when executed in pursuance of an agreement to settle which is stamped as an instrument of settlement.

Under the English Stamp law, the cases in which the occasion for denoting payment of duty arise are : (1) duplicates or counterparts of instruments, (2) securities which are collateral, substituted or by way of further charge, (3) simultaneous reconveyances of separate properties comprised in one mortgage security on payment thereof, (4) conveyances and leases executed in pursuance of agreements already stamped with *ad valorem* duty and (5) settlements effected by means of several instruments.<sup>1</sup>

As an instance of exemption of one instrument depending on the duty paid on another instrument, exemption to Art. 30 may be referred to.

**5. "Collector."**—The officers who are authorised to act as Collectors for the purposes of this section in different Provinces are shown below :

(1) *Bengal*—All Deputy Collectors in charge of sub-divisions, Senior Deputy Collectors at the Sadar stations of districts, District Registrars including the Registrar of Calcutta, District Sub-Registrars and Sub-Registrars and all officers holding temporary charge of sub-registry offices, who are appointed to be Collectors for the purpose of denoting the payment of duty as provided by this section.

Section 16—NOTE 3

1. ('33) Mad S M p. 26. (Citing G O No. 2646, J. D., 14th October 1879.)

Section 16—NOTE 4

1. Halsbury, *Laws of England*, Vol 24, page 716.



(2) *C. P. and Berar*—All Assistant Commissioners and Extra Assistant Commissioners who are Sub-Divisional Officers, and the Additional District Magistrate, Jubbalpore.

(3) *Madras*—All Sub-Collectors, Head Assistant Collectors, Deputy Collectors in charge of divisions, Assistant Collectors who are First Class Magistrates in charge of divisions, and all Registering Officers appointed under Act III of 1877, (Act XVI of 1908).

(4) *Punjab*—In the case of Lahore District, the first Assistant to the Deputy Commissioner.

(5) *United Provinces*—The Additional Collectors of Allahabad, Cawnpore and Jhansi, the personal Assistant to the Collector of Gorakhpur, the Senior Assistant Commissioner, Naini Tal, Additional District Magistrates and Additional Collectors in the United Provinces, and Assistant Collector of the Meerut District and Registering Officers.

For the various Government Notifications in this respect see Appendix G.

**6. Manner of denoting payment.**—Endorsement under the hand of the Collector, as provided by this section, is the only manner in which the payment of duty can be denoted. The collecting Government has not framed any rule prescribing any other manner.

Under the English Stamp law, the payment of duty in such cases is denoted by a special stamp known as a "denoting stamp."<sup>1</sup> When instruments are stamped with a denoting stamp, they cannot be objected to, when tendered in evidence, as being improperly stamped.<sup>2</sup> The endorsement of the Collector made under this section has, however, no such effect.

#### *C.—Of the time of stamping Instruments.*

**\*17.** All instruments chargeable with duty and executed by any person in <sup>a</sup> [the Provinces] shall be stamped before or at the time of execution.

a. Substituted for "British India" by I. O.

#### **Provincial Amendment.**

#### **BOMBAY**

Insert the following proviso to section 17 :

"Provided that a clearance list described in Art. 20A of Sch. I may be stamped at any time but not later than two months after it is submitted to the clearing house of a stock exchange recognised under the Bombay Securities Contracts Control Act, 1925."

Note:—This amendment shall be deemed to have been made on and to have had effect from the 31st March, 1938

—*Bombay Act IV of 1939, S. 4 and VI of 1942, S. 3 (1).*

#### **Synopsis**

- |  |   |
|--|---|
| 1. Legislative changes.                                | 7. "Before or at the time of execution."                |
| 2. Scope.  | 8. Stamping at time of payment.                         |
| 3. "Chargeable with duty." See Notes on Section 2 (6). | 9. Post-dated cheque.                                   |
| 4. "In the Provinces."                                 | 10. Non-compliance with section—Effect.                 |
| 5. "Stamped."  | 11. Admissibility of evidence to show time of stamping. |
| 6. "Execution"—Meaning of.                             |   |

\*[1879—S. 16 ; 1869—S. 28 ; 1862—S. 18 ; 1860—S. 13 (6).]

#### **Section 16—NOTE 6**

1. Halsbury, *Laws of England*, Vol. 24, page 716.

2. ('52) 8 Ex 97 (105) : 22 L J Ex 85 : 91 R R 387 : 155 E R 275 : 19 L T (OS) 1257, *Prudential Mutual Assurance Investment & Loan Association v. Curzon*.



1. **Legislative changes.**—This section is the same as S. 16 of the Act of 1879. The corresponding provisions in the Acts prior to 1879 were s. 28 of the Act of 1869, S. 18 of the Act of 1862 and s. 13 (6) of the Act of 1860.

2. **Scope.**—This section makes provision as regards the time of stamping of instruments executed in British India. It says that such instruments must be stamped before or at the time of their execution. Sections 18 and 19 make provision as regards the time of stamping of instruments executed out of British India. They provide for stamping of such instruments after their execution when they are received in British India. Section 34 and s. 47 are exceptions to this section and provide for stamping after execution of certain instruments executed in British India.

3. **"Chargeable with duty."**—See Notes on S. 2 (6).

4. **"In the Provinces."**—The section applies to instruments *executed in the Provinces*. A hundi drawn by a person in India on a firm at Colombo is an instrument executed in India and is governed by this section.<sup>1</sup>

According to the Stamp Law of Rampur State an instrument completed in favour of the State is admissible in evidence even though not stamped. A promissory note was executed at Rampur by a person in favour of the Nawab of Rampur on an unstamped paper. The suit on the promissory note was filed in British India against the heirs of the executant who were residing in British India. Before the note was filed in Court it was stamped by plaintiff's pleader with a one anna stamp of British India. The defence was that the instrument was void by reason of its not having been stamped at the date of its execution. It was held that the note, being completed in favour of the state and being a note in accordance with the law in existence at the place of contract, was admissible in evidence.<sup>2</sup>

5. **"Stamped."**—In *Motilal v. Jagmohandas*<sup>1</sup> Russell J. observed as follows :

"It will be observed that the word in S. 17 of Act II of 1899 (S. 16 of Act I of 1879) is stamped and not duly stamped—this is obviously to enable instruments not duly stamped and not being chargeable with one anna or a bill of exchange, or promissory note to be duly stamped and to provide for the stamping of bills, promissory notes and cheques under S. 47.....The result, it seems to me, therefore, is that when a cheque is tendered in evidence with a one anna stamp upon it, it is 'stamped' under S. 17 even though it may be post-dated."

It is submitted that the view that it is sufficient for the purpose of this section if *some* stamp is affixed to an instrument at the time of its execution even though such stamp may not be sufficient is not correct.

For further consideration of this subject, see Notes on s. 35.

6. **"Execution"—Meaning of.**—The words "executed" and "execution" are defined in S. 2 (12) to mean "signed" and "signature" respectively. A final order in a partition suit is an instrument of partition as defined in S. 2 (15) and is chargeable with duty under Art. 45. The provisions of this section will apply to such an order. The signature of the Registrar of the High Court to a final order by

#### Section 17—NOTE 4

1. ('82) 5 Mad 220 (221) (DB), *Ramasami v. Ramasami*.

2. ('11) 33 All 571 (577) : 10 Ind Cas 247

(DB), *Amina Begam v. Nawab of Ram pur*  
Also see S. 19, Note 5.

#### Section 17—NOTE 5

1. ('04) 6 Bom L R 699 (702).



the Court in partition suits, however, does not amount to "execution" within the meaning of this section. His signing the order in accordance with the rules of the Court is a mere attestation that the order which he signs is a genuine order of the Court and the order is not "executed" by him within the meaning of the word as used in the Stamp Act. The provisions of this section, therefore, do not apply to any such order.<sup>1</sup>

For further discussion see Notes on s. 2 (12). See also note 7 and the under mentioned ruling<sup>2</sup> of the Madras Board of Revenue.

**7. "Before or at the time of execution."**—This section requires that an instrument executed in British India must be stamped *before or at the time of execution*. Section 16 of the Act of 1879 contained the same provision. The term "execution" was, however, not defined in that Act. It was held to mean, in the decisions arising under that Act, an act or series of acts completing an instrument. In the case of negotiable instruments the transaction was held not to be complete until delivery of the instrument and if the instrument was stamped at the time of delivery it was held stamped "before or at the time of execution" within the meaning of s. 16 of that Act even though the stamp was affixed after the signature of the executant.<sup>1</sup> Section 2 (12) of the present Act defines "execution" as meaning "signature" and under the present Act an instrument stamped after the signature of the executant will not be stamped in accordance with the provisions of this section. It has, however, been held that even under the present Act if an instrument is stamped *immediately* after the signature of the executant, the signing and the stamping being continuous acts and forming parts of the same transaction the stamping is done "at the time of execution" within the meaning of this section.<sup>2</sup>

As to whether the provisions of the section apply to a final order by High Court in a partition suit signed by the Registrar, see Note 6.

Under the Stamp Acts of 1860 and 1862 an instrument was not required to be stamped before or at the time of execution. Hence it was held that a bond could be stamped subsequent to the institution of the suit but before the first hearing and before the Court was asked to receive it in evidence.<sup>3</sup> This is no longer good law.

**8. Stamping at time of payment.**—This section requires that an instrument chargeable with duty and executed in British India must be stamped before or at the time of its execution. Section 47 provides an exception to the section. It provides that when a bill of exchange or promissory note chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp. Thus it enables the instruments

#### Section—17 NOTE 6

1. ('31) Beng S M Vol I p. 23. (*Advocate-General's opinion enclosed in letter No. 2015, dated the 13th November, 1907, from the Solicitor to the Government of India—Board's file No. 95 of 1907.*)

('40) Bihar S M p. 106. (Do.)

2. ('33) Mad S M p. 27. (Citing, B P 1440, 3rd June 1882—Marginal credit bills bearing the signature of a party but with a blank portion not filled up were held to be not executed and consequently valueless and not negotiable. The Board gave it as its opinion that such instruments could be

stamped by the Superintendent of stamps.)

#### Section—17 NOTE 7

1.†(1900) 3 Oudh Cas 195 (198) (DB), *Jawahir Singh v. Lachman Das*.

†('95) 19 Bom 635 (638) (DB), *Bhawanji Harbhum v. Devji Punja*.

('01) 24 Mad 259 (261) (DB), *Surij Mull v. Hudson*.

2. ('01) 24 Mad 259 (261) (DB), *Surij Mull v. Hudson*.

Also see S. 12, Note 5.

3. ('66) 3 Bom H C R (AC) 92 (93) (D B), *Atmaram Gulabrai v. Amirchand Rupchand*. Also see S. 35 Note 3.



mentioned therein to be stamped even after execution.<sup>1</sup>

**9. Post-dated cheque.**—It is settled law that a post-dated cheque is only a *cheque* for purposes of the Stamp Act and not a bill of exchange<sup>1</sup> even though, until the date mentioned on the cheque, it is not capable of being cashed and, hence, is not, till such date, “payable on demand,” which is an essential element in the definition of cheque under S. 2 (7). The reason is that the document must be only considered with reference to what it purports to be on the face of it and collateral circumstances ought not to be imported into its construction.

**10. Non-compliance with section—Effect.**—The words “duly stamped” as defined in s. 2 (11) mean stamped not only with a stamp of the amount required by law but also in the manner prescribed by law. This section lays down the manner of stamping. An instrument not stamped before or at the time of execution is not stamped in the manner prescribed by law and therefore not duly stamped.<sup>1</sup> Being not duly stamped it cannot be acted upon or be admitted in evidence under S. 35 of the Act.<sup>2</sup> Where, however, the instrument is admitted in evidence by the lower Court its admission cannot be questioned in appeal under S. 36.<sup>3</sup>

Section 13 of the Bombay Regulation XVIII of 1827 allowed an unstamped or insufficiently stamped instrument to be duly stamped on payment of the price of the proper stamp and a certain penalty. Under s. 14 of the Regulation such an instrument was valid against the grantor from its original date but as against third persons it was valid from the date on which it was stamped.<sup>4</sup>

**11. Admissibility of evidence to show time of stamping.**—Under S. 18 of Act XVIII of 1869 an instrument was not admissible in evidence unless such instrument bore a stamp of a value not less than the amount of the duty with which it was chargeable under the law in force in British India at the time of its execution. Thus, under the section for an instrument to be admissible in evidence it was only necessary that the instrument should have borne a stamp of a value not less than the amount of the proper duty. Hence, the question as to *when* an instrument was stamped was not relevant under S. 18. The Courts were satisfied if the instrument in question bore the required stamp at the time it was tendered in evidence.<sup>1</sup> Section 35 of the present Act (S. 34 of the Act of 1879), however, requires that the instrument must be “duly stamped” for its admissibility in evidence. “Duly stamped” means stamped not only with a stamp of the amount required by law

#### Section 17—NOTE 8

1. ('25) 12 AIR 1925 Bom 520 (520): 90 Ind Cas 689 (DB), *Dayaram v. Chandulal*.

#### Section 17—NOTE 9

1. ('04) 6 Bom L R 699 (703), *Motilal v. Jagmohandas*.

#### Section 17—NOTE 10

- 1.†('04) 6 Bom L R 699 (701), *Motilal v. Jagmohandas*.

('89) 13 Bom 484 (485), *Jethibai v. Ramchandra Narotam*.

Also see S. 35, Note 3.

2. ('89) 13 Bom 484 (485), *Jethibai v. Ramchandra Narotam*.

[See also ('31) 18 AIR 1931 Lah 631 (631): 132 Ind Cas 881 (DB), *Pahlad v. Shiblal*. (Finding that stamp was affixed after execution is one of fact and cannot be challenged in second appeal.)]

3. ('08) 11 Oudh Cas 152 (153, 154), *Humayun Qadr v. Wajid Ali*.

(1900) 3 Oudh Cas 195 (198) (DB), *Jawahir Singh v. Lachman Das*.

- ('82) 5 Mad 220 (221) (DB), *Ramasami v. Ramasami*. (Section 34 cl. (3) of the Act of 1879.)

Also see S. 36 Note 6.

4. ('81) 5 Bom 127 (129) (DB), *Narayan v. Rangubai*.

(1863) 1 Bom H C R 52 (55) (SB), *Raghia v. v. Dharma Jhatu*.

- ('68) 5 Bom H C R (AC) 217 (221) (DB), *Jagannath v. Apaji*.

#### Section 17—NOTE 11

1. ('75) 24 Suth W R 198 (200) (DB), *Sreemati Noor Bibee v. Sheikh Ramzan*.



but also in the manner laid down by law. One of the rules for stamping is that an instrument executed in British India must be stamped before or at the time of execution. If an instrument is not so stamped it is not duly stamped. Thus, in order to see whether an instrument is duly stamped it becomes the duty of the Court to ascertain whether an instrument is stamped before or at the time of execution and the evidence as regards the time of the stamping of the instrument becomes admissible under the present Act.<sup>2</sup>

**\*18.** (1) Every instrument chargeable with duty executed only out of <sup>a</sup> [the Provinces], and not being a bill of exchange, <sup>b</sup> [\* \*] or promissory note, may be stamped within three months after it has been first received in <sup>a</sup> [the Provinces].

Instruments other than Bills and notes executed out of the Provinces.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the <sup>c</sup> [collecting Government] may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

a. Substituted for "British India" by I. O.

b. The word "cheque" was omitted by S. 5 of the Indian Finance Act, 1927 (V of 1927.)

c. Substituted by A. O. for the words "Governor-General in Council."

#### Notification.

All functions of the Central Government under, or in relation to, s. 18 have been entrusted to Provincial Government.—See Gazette of India, Finance Department (Central Revenues) Notification No. 9 dated 13-11-1937.

#### Synopsis.

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|---|---|
| <ol style="list-style-type: none"> <li>1. Legislative changes.</li> <li>2. "Chargeable with duty."</li> <li>3. "Three months after it has been first received in the Provinces."</li> </ol> | <ol style="list-style-type: none"> <li>4. Failure to stamp within the period of three months—Effect.</li> <li>5. Manner of stamping.</li> </ol> |
|---|---|

1. **Legislative changes.**—The Stamp Acts XXXVI of 1860 and X of 1862 contained no provision for stamping instruments executed out of British India except bills of exchange. Such a provision, corresponding to S. 3 (c) of the present Act, was inserted in Act XVIII of 1869.<sup>1</sup> Section 24 (c) of that Act corresponded to this section and ran as follows :

"Provided also that, in any case coming under this section in which an instrument, other than a bill of exchange or a promissory note, purports to

\*[1879—S. 17 ; 1869—S. 24 (c). Cf. (1870) 33 & 34 Vict., C. 97—S. 15 (2) (a) ; (1891) 54 & 55 Vict., C. 39—S. 15 (3) (a).]

('81) 9 Cal L Rep 272 (275) (DB), *Kalicharan v. Nobo Kristo*.

('75) 12 Bom H C R 208 (209), *Bhauram Madan Gopal v. Ramnarayan Gopal*.

2. ('89) 13 Bom 484 (485), *Jethibai v. Ramchandra Narotam*.

#### Section 18—NOTE 1

1. Section 4 of that Act ran as follows :—  
"For every instrument mentioned in the

first and second schedules hereto and executed in British India on or after the first day of January 1870, or executed out of British India on or after that day, but relating to any property in British India, there shall be payable to the Government of India, as stamp-duty, the amount indicated in the first or second schedule hereto annexed, to be the proper duty for such instrument."



have been executed out of British India, if the Collector is satisfied that the instrument was so executed, and also that it has been brought to him within the three months next after its arrival in British India, he shall, on payment of the duty with which such instrument would have been chargeable if executed in British India, certify by endorsement thereon that proper stamp-duty has been levied upon it."

Section 17 of the Stamp Act of 1879 was the same as this section. The word "cheque" after the words "bill of exchange" has been omitted by S. 5 of the Indian Finance Act, 1927 (v of 1927). The words "collecting Government" have been substituted for the words "Governor-General in Council" by Government of India (Adaptation of Indian Laws) Order, 1937.

2. "Chargeable with duty."—This section only applies to instruments which are chargeable with duty. For this purpose, the instruments mentioned in the section, namely, those other than bills of exchange and promissory notes, are governed by s. 3 (c).

Under S. 3 (c) the liability to duty in regard to such an instrument executed abroad arises only where it relates to any property situate or to any matter or thing done, or to be done in British India. Hence, this section does not apply to a simple money bond executed out of British India.<sup>1</sup>

The instruments in the following cases were held liable to be stamped under this section :

- (1) Deed of partition of property a part of which is situate in British India.<sup>2</sup>
- (2) An acknowledgment of a debt.<sup>4</sup>

3. "Three months after it has been first received in the Provinces."—This section allows a period of three months within which to stamp instruments mentioned therein. It says nothing about the custody in which the document must be in order that it may be allowed to be stamped. It may be stamped even though it is not at the time in the custody of the person desiring it to be stamped. Thus, an instrument may be stamped under this section even after it has been filed in Court.<sup>1</sup>

The period of three months has to be calculated from the time when the document has been first *received* in British India. The remarks in the undermentioned case<sup>2</sup>, which suggest that the period runs from the date of *execution* of the document, are not correct.

#### Section 18—NOTE 2

1. ('28) 15 AIR 1928 Pat 134 (137) : 7 Pat 99 : 105 Ind Cas 502 (DB), *Herbert Francis v. Mahomed Akbar*. (Mortgage-deed executed in England—Lost before registration in India—Deed not stamped—Plaintiff relying on the deed as a bond and seeking to adduce secondary evidence—Provision of mortgage in the deed must be disregarded as the document was not registered—Stamp not necessary as a bond—Secondary evidence may be given.)
3. ('20) 7 AIR 1920 Mad 149 (149) : 55 Ind Cas 965 (DB), *Rajangam Aiyer v. Rajamangamer*.
4. ('28) 15 AIR 1928 All 666 (667) : 115 Ind Cas 453, *Ali Mahomed v. Jagannath Prasad*. (Facts are not clear but it is presumed that the other conditions of this sec-

tion were satisfied.)

#### Section. 8—NOTE 13

1. ('98) 1898 Bom P J 371 (DB), *Rango Bhavani Kulkarni v. Tuljaram Duranmal*. (A copy of an original document being filed by a party with his plaint is no reason for not allowing him to stamp the original in his possession.)
2. ('35) 22 AIR 1935 Nag 54 (55) : 31 Nag L R 162 : 156 Ind Cas 213, *Kedarmal Raghunath v. Ratiram*. (The remarks are :—"The plaintiff based his claim on a bond executed on 31-1-1933 and bearing a stamp of Re 1 of the Khairagarh State. The plaint was presented on 21-11-1933 i.e., nearly ten months after the execution of the bond. It is clear therefore that the bond cannot be stamped in British India under the provisions of S. 18, Stamp Act."



4. **Failure to stamp within the period of three months—Effect.**—If an instrument mentioned in this section is not stamped within the period of three months prescribed by this section, it is not admissible in evidence under S. 35. However, it may become so admissible on the fulfilment of conditions mentioned in the proviso to that section.<sup>1</sup> In the case of instruments chargeable with duty of one anna only, as, for instance, an acknowledgment of a debt, the proviso to S. 35 does not apply and hence such instruments not stamped within the period of three months cannot be made admissible in evidence by subsequent payment of duty and penalty.<sup>2</sup>

Where such an instrument is brought to the Collector after the expiry of three months, he may, if he is satisfied that the omission to stamp it has been occasioned by accident, mistake or urgent necessity, proceed under Ss. 41 and 42 to validate it.<sup>3</sup>

5. **Manner of stamping.**—According to R. 12 (1) of the Stamp Rules, 1925, instruments coming under this section, other than those which may be stamped with adhesive stamps, must be stamped with impressed labels.

Where an instrument is taken to the Collector under sub-s. (2) of this section, the instrument is to be stamped in the manner provided by R. 12 (2).

Under this section, a Collector is bound to affix such stamps as may be required by the party presenting the instrument and it is not his province to tender gratuitous advice. Where, however, the party is in doubt as to the proper amount of stamp required, he should make an application to the Collector to determine the duty under s. 31.<sup>1</sup>

**\*19.** The first holder in <sup>a</sup> [the Provinces] of any bill of exchange <sup>b</sup> [payable otherwise than on demand], <sup>c</sup> [\* \*] or promissory note drawn or made out of <sup>a</sup> [the Provinces] shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in <sup>a</sup> [the Provinces], affix thereto the proper stamp and cancel the same :

Provided that,—

(a) if, at the time any such bill of exchange, <sup>c</sup> [\* \*] or note comes into the hands of any holder thereof in <sup>a</sup> [the Provinces], the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled ;

(b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

a. Substituted for "British India" by I. O.

b. These words were inserted by S. 5 of the Indian Finance Act, 1927 (V of 1927.)

c. Word "cheque" was omitted, *ibid.*

\*[1879—S. 18 ; 1869—Ss. 8, 31 ; 1862—S. 11 ; 1860—S. 9. Cf. (1870) 33 & 34 Vict., C. 97—S. 51 ; (1891) 54 & 55 Vict., C. 39—S. 35.]

#### Section 18—NOTE 4

1. ('78) 1 Mad 134 (141) : 11 Mad Jur 378, *Oakes & Co. v. Jackson*. (Agreement executed in England to serve in British India must bear Indian stamp—May be admitted in evidence on payment of penalty.)

2. ('28) 15 AIR 1928 All 666 (667) : 115

Ind Cas 453, *Ali Mahomed v. Jagannath Prasad*.

3. ('33) Mad S M p. 27. (Citing, B. P. 1420, 1st June 1882.)

#### Section 18—NOTE 5

1. ('33) Mad S M p. 27. (Citing, B P 975, 16th July 1880.)



## Synopsis

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Legislative changes.</li> <li>2. Analogous law.</li> <li>3. Scope and applicability of the section.</li> <li>4. "Bill of exchange payable otherwise than on demand."</li> <li>5. Foreign Stamp-laws.</li> </ol> | <ol style="list-style-type: none"> <li>6. "Drawn or made out of the Provinces."—Evidence as to.</li> <li>7. Effect of non-cancellation.</li> <li>8. Presumption as to time of stamping—Proviso (a).</li> <li>9. Proviso (b).</li> </ol> |
|---|---|

1. **Legislative changes.**—For corresponding sections of the previous Stamp Acts, see S. 9 of the Act of 1860 ; S. 11 of the Act of 1862 ; sections 8 and 31 of the Act of 1869 and S. 18 of the Act of 1879.

The words "payable otherwise than on demand" were inserted by S. 5 of the Indian Finance Act, V of 1927 ; and the word "cheque" was omitted by the same section.

2. **Analogous law.**—See S. 35 of the English Stamp Act of 1891.

3. **Scope and applicability of the section.**—This section prescribes the time for affixing a stamp to a foreign bill of exchange or promissory note and also provides by whom it should be affixed. It requires that the *first holder* in British India must affix a proper stamp to such bill or note and cancel the same *before* it is presented for acceptance or payment or endorsed, transferred or otherwise negotiated in British India.<sup>1</sup>

The word "acceptance" does not occur in S. 35 of the English Stamp Act, 1891. Accordingly it has been held that a foreign bill need not be stamped under that section before it is presented for acceptance.<sup>2</sup>

The section is not concerned with whether a bill or note has or has not been stamped outside British India. Hence, even if it has been stamped abroad with the correct Indian stamp, it must be stamped again under this section "after it is brought into British India."<sup>3</sup>

Where none of the acts referred to in the section takes place, the occasion to affix a stamp to a foreign bill or note does not arise.<sup>4</sup> The filing of a suit is not covered by any of those acts,<sup>5</sup> and there is no provision of law which requires a foreign promissory note to be stamped before it is sued on or used in a Court where the first holder has not done any of the acts mentioned in the section.<sup>6</sup> Hence such

## Section 19—NOTE 3

1. ('41) 28 AIR 1941 Mad 868 (869) : 200 Ind Cas 342, *Sivasubramania v. Kalankarayan*. (It is submitted that the remark in this case that in regard to a promissory note "stamping and cancellation seems to be required only before transfer or endorsement" is not correct.)
- ('98) 8 Mad L Jour 182 (183), *Simulu Ebrahim v. Abdul Rahiman*.
- ('35) 22 AIR 1935 Sind 48 (49) : 28 Sind LR 266 : 153 I.C. 635, *Gangaram Shewaram v. Mallick Nur Ahmad*.
- (1869) 3 Q B 753 (760) : 17 W R (Eng) 8 : 18 L T 881 : 37 L J Q B 280, *Griffin v. Weatherby*. Also see S. 3 Note 17.
2. (1857) 115 R R 428 (430) : 5 W R (Eng) 568 : 157 E R 24 : 29 L T (OS) 201 : 26 L J

- Ex 302, *Sharples v. Rickard*.
3. ('41) 28 AIR 1941 Mad 868 (869) : 200 Ind Cas 342, *Sivasubramania v. Kalankarayan*.
4. (1869) 3 Q B 753 (760) : 17 W R (Eng) 8 : 18 L T 881 : 37 L J Q B 280, *Griffin v. Weatherby*.
- ('16) 3 AIR 1916 Sind 66 (69) : 9 Sind L R 150 : 32 Ind Cas 582 (DB), *Ramsing v. Parumal*.  
Also see S. 3 Note 17.
5. ('19) 6 AIR 1919 Mad 104 (104) : 52 Ind Cas 477, *Kunhi Koya v. Assan Bava*.  
Also see S. 3 Note 17.
6. ('99) 22 Mad 337 (338) : 9 Mad L Jour 135, *Mahomed Rowthan v. Mahomed Husain*. (Suit on promissory note executed out of British India—Suit competent though note is unstamped.)



a note can be sued on by the first holder in British India and is admissible in evidence in a Court in British India even though it is unstamped if the suit is instituted before any of the acts set out in the section takes place.<sup>7</sup> In such a case, according to the High Court of Madras, if any stamp is necessary it would be sufficient if at the time of the decree an Indian stamp is affixed to the bill or note.<sup>8</sup>

The section applies to all foreign bills or notes whether the duty chargeable is one anna or more than one anna.<sup>9</sup>

The proper stamp for a foreign bill or note is, under R. 17 (a) of the Stamp Rules, 1925, a special adhesive stamp bearing the words "Foreign Bill" when the duty payable is more than one anna; when the duty payable is one anna the proper stamp is an adhesive stamp under S. 11 (a) and R. 13 (a).

4. "Bill of exchange payable otherwise than on demand."—Before the Indian Finance Act, V of 1927, any foreign bill of exchange whether payable on demand or payable otherwise than on demand was chargeable with stamp duty under S. 3 (b) and had to be stamped as required by this section. Since the amendment of these sections by that Act, it is only a foreign bill payable *otherwise* than on demand that is liable to duty under S. 3 (b) and requires to be stamped by the first holder under this section.

5. Foreign Stamp-laws.—It has been seen in Note 3 that a foreign promissory note can be sued on in a Court in British India even though it is not stamped under this section if the suit is instituted *before any of the acts set out in the section takes place*. But in order that such a suit may be maintainable it is necessary that the note must be valid according to the law of the place where it was executed.<sup>1</sup>

Now, the Stamp-law of a foreign country may render a note *invalid* because it is not stamped according to that law. A Court in British India will, therefore, have to take notice of the foreign Stamp-law to determine whether a note is valid or not according to that law.

Thus, the High Court of Bombay, following *Bristow v. Sequeville*<sup>2</sup> has laid down that if the law of the foreign country in which an instrument is executed provides no more than that the agreement contained in the instrument shall not be received in evidence because it is not stamped, then the agreement may be sued upon and enforced in a Court in British India; but if the law of the foreign country provides that, by reason of the want of stamp, the agreement itself which is contained in the unstamped instrument shall be void, then the plaintiff cannot succeed in a Court of British India, because *ex hypothesi* there would be no contract on which he could succeed.<sup>3</sup> Applying this principle, it was held by that High Court that a

7. ('16) 3 AIR 1916 Sind 66 (69): 9 Sind L R 150: 32 Ind Cas 582 (DB), *Ramsing v. Parumal*.

\*('98) 8 Mad L Jour 182 (183), *Simulu Ebrahim v. Abdul Rahiman*.

('99) 22 Mad 337 (338): 9 Mad L Jour 135 (DB), *Mahomed Rowthan v. Mahomed Husain*.

('19) 6 AIR 1919 Mad 104 (104): 52 Ind Cas 477, *Kunhi Koya v. Assan Bava*.

('41) 28 AIR 1941 Mad 868 (869): 200 Ind Cas 342, *Sivasubramania v. Kalankarayan*.

('35) 22 AIR 1935 Sind 48 (49): 28 Sind L R 266: 153 Ind Cas 635, *Gangaram Shewaram v. Mallick Nur Ahmad*.

Also see S. 3 Note 17.

8. ('19) 6 AIR 1919 Mad 104 (104): 52 Ind

Cas 477, *Kunhi Koya v. Assan Bava*. ('98) 8 Mad L Jour 182 (183), *Simulu Ebrahim v. Abdul Rahiman*.

Also see S. 3 Note 17.

9. ('79) 4 Cal 259 (260): 2 Cal L Rep 409, *Mathoora Mohun Roy v. Peary Mohan Shaw*.

#### Section 19—NOTE 5

1. ('19) 6 AIR 1919 Mad 104 (104): 52 Ind Cas 477, *Kunhi Koya v. Assan Bava*.

2. (1850) 5 Ex 275 (279): 19 L J Ex 289: 82 R R 664: 115 E R 118.

3. ('18) 5 AIR 1918 Bom 211 (211, 212): 42 Bom 522: 46 Ind Cas 174 (DB), *Dhondiram v. Sadasukh*.

Also see S. 3 Note 21.



promissory note executed in the Hyderabad State and stamped under this section but bearing no stamp of that State could be sued upon in British India, as the effect of not stamping the note according to the Stamp-law of Hyderabad was merely to make it inadmissible in evidence in that State and not to render it void.<sup>4</sup> The High Court of Madras has also followed the Bombay decision in the undermentioned case<sup>5</sup> in which the facts were similar to those in the Bombay case.

In the undermentioned case<sup>6</sup> a promissory note was executed in Rampur in favour of the Nawab of that State on an unstamped paper. A suit was instituted on the basis of the note in British India. The note was stamped with a British Indian stamp and filed in Court. The defendant contended that the note was void by reason of its not being stamped at the time of execution and therefore could not be made the basis of a suit. The lower Court held that it was immaterial whether or not the promissory note complied with the provisions of the Stamp-law of the Rampur State, and that it was enough if it be stamped according to the Indian Stamp Act. It was held that the view of the lower Court was not correct and that it was necessary to see whether the note was void according to the law of the Rampur State. According to the Stamp-law of Rampur State an instrument executed in favour of the State did not require to be stamped. It was, therefore, further held that as the note was not drawn in favour of the Nawab in his private capacity it did not require to be stamped under the law of Rampur State and as such could be the basis of a suit in British India.

It has next to be considered whether a bill or note which is invalid according to the Stamp-law of the country where it was executed can be enforced in British India *after it is stamped as required by this section*.

Now, S. 136 of the Negotiable Instruments Act provides that the circumstance that an agreement evidenced by a foreign negotiable instrument is invalid according to the law of the country wherein it was executed does not invalidate any subsequent acceptance or endorsement made thereon in British India. The invalidity contemplated by this section may be due to want of stamp required by the law of the place where the bill or note was executed, and even in such a case a subsequent acceptance or endorsement made in British India will be valid. Therefore, reading S. 136 of the Negotiable Instruments Act with this section, it would follow that a foreign bill or note which is invalid for want of a stamp according to the law of the country of its origin may yet be validated by being properly stamped under this section at the time of its acceptance or endorsement.

In this respect the English law is quite specific, for proviso (a) of sub-s. (1) of S. 72 of the Bills of Exchange Act of 1882 (45 & 46 Vict. C. 61) provides that if a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue. See also the undermentioned case.<sup>7</sup>

**6. "Drawn or made out of the Provinces."—Evidence as to.**—Whether a bill or note was drawn or made out of the Provinces or is an inland instrument must

4. ('18) 5 AIR 1918 Bom 211 (212) : 42 Bom 522 : 46 Ind Cas 174 (DB), *Dhondiram v. Sadasukh*.

5. ('30) 17 AIR 1930 Mad 1004 (1008) : 53 Mad 968 : 128 Ind Cas 870 (DB), *Venkata Rami Reddi v. Sri Bhupal Rao*.

6. ('11) 33 All 571 (573, 577) : 10 Ind Cas 247 (DB), *Amina Begam v. Nawab of Rampur*. Also see S. 17 Note 4.

7. (1907) 2 KB 735 (750, 751) : 77 LJ KB

71 : 97 LT 155, *Smith v. Prosser*. (A suit based on a promissory note executed in South Africa was instituted in England. The note was unstamped when it was made. But for the purpose of suing upon it in England it was stamped as a foreign bill. Held that for the purposes of the action the note was stamped as a foreign bill, and was properly stamped under the English Stamp Law when the writ was issued.)



necessarily be a question of fact. A Court can, therefore, admit evidence to show that a bill which purports to be drawn abroad is in fact an inland bill.<sup>1</sup>

**7. Effect of non-cancellation.**—The section makes it obligatory on the first holder to affix a stamp on a foreign bill or note and to cancel the same *before* he does any of the acts set out in the section. If the stamp is not cancelled at the proper time, it cannot be cancelled afterwards. Thus, where a stamp was affixed to a hundi which was drawn at Indore before it was presented for payment in British India but was not cancelled before presentation, it was held in a suit on the basis of the hundi that in the face of the imperative words of this section it was impossible to accede to the suggestion that the stamp could be cancelled in the Court<sup>1</sup>. See also section 12 Note 7.

The English law is, however, different in this respect. Proviso (b) of S. 35 of the English Stamp Act of 1891 enables a *bona fide* holder to cancel the stamp himself if it was not cancelled when the foreign bill came into his hands and upon his so doing such bill is deemed to be duly stamped and as valid and available as if the stamp had been duly cancelled by the person by whom it was affixed. Under the English law, therefore, a foreign bill, in order to be admissible in evidence, requires only that the proper stamp should have been *affixed*.<sup>2</sup> Regarding this proviso, Blackburn, J. expressed an opinion that the cancellation may be made in open Court at any time before verdict.<sup>3</sup>

As to the manner in which a stamp is to be cancelled, see S. 12 and Notes thereon. See also Note 8.

**8. Presumption as to time of stamping—Proviso (a).**—If a foreign bill or note is properly stamped and the stamp is cancelled when it comes into the hands of a *bona fide* holder, but subsequently it appears that the stamp was not affixed and cancelled by the proper person and at the proper time, the result would be that the bill or note would not be regarded as duly stamped. This proviso protects the holder against this result by providing that so far as regards him the stamp shall be deemed to have been duly affixed and cancelled. Thus, the proviso saves a *bona fide* holder from any duty to show that the proper person affixed and cancelled the stamp, provided it is properly affixed and cancelled at the time it comes into his hands and he has no reason to believe that the stamp was affixed or cancelled otherwise than by the proper person and at the time required by the Act.<sup>1</sup>

It would be very inconvenient for a plaintiff suing on a foreign bill to be required to prove that the stamp was affixed to the bill before its first endorsement to a holder in British India.<sup>2</sup> Where, therefore, in an action on a foreign bill of exchange the required stamp was upon the bill at the time of the trial, but no evidence was given to show that it was on the bill at the time it was endorsed to the plaintiff, it was held that it must be presumed to have been there at that time and that it was for the defendant to give evidence to rebut the presumption.<sup>3</sup>

Where, however, it is clear that from the perusal of a foreign bill or note the

#### Section 19—NOTE 6

1. (1843) 152 E R 895 (896): 1 L T (OS) 149: 12 L J Ex 287: 63 R R 664, *Bartlett v. Smith*.

#### Section 19—NOTE 7

1. (25) 27 Bom L R 1122 (1126), *Ramprasad Shival v. Shrinivas Balmukund*.
2. (1874) 31 L T 372 (374): 23 W R (Eng) 89, *Marc v. Rouy*.
3. (1874) 30 L T 463 (464), *Viale v. Michael*.

#### Section 19—NOTE 8

1. (1874) 31 L T 372 (374): 23 W R (Eng) 89, *Marc v. Rouy*.
2. See (1868) 3 CP 286 (288): 18 L T 904: 37 L J CP 146: 16 W R (Eng) 1128, *Bradlaugh v. De Rin*.
3. (1868) 3 CP 286 (288): 18 L T 904: 37 L J CP 146: 16 W R (Eng) 1128, *Bradlaugh v. De Rin*.



plaintiff must have known that the stamp had been affixed and cancelled before it came into British India and therefore before it came into the hands of the first holder in British India he cannot claim the benefit of the proviso.<sup>4</sup> Thus, where a promissory note was executed in Colombo and stamped at the time of execution with the correct stamp for a note in British India and when the note came into British India it was assigned to the plaintiff who sued thereon, it was held that the proviso did not apply to the case.<sup>5</sup>

It has been seen in Note 7 that under the English law a foreign bill in order to be admissible in evidence, requires only that the proper stamp should have been affixed. Hence, under the English Law, although the stamp is not cancelled, if the holder proves that the proper stamp was affixed before the bill came into his possession, the burden of proof that it was not duly stamped is thrown upon the person objecting to its admission.<sup>6</sup> This case has no bearing on the interpretation of this section as it requires that affixing a stamp and its cancellation should both take place before any of the acts set out in the section has been done.

9. Proviso (b)—Proviso (a) protects a holder from a subsequent disclosure that the stamp on a foreign bill or note was not affixed and cancelled by the proper person and at the proper time. But the person who has omitted to affix the stamp or cancel the same is not protected by that proviso. On the other hand proviso (b) says that he will not be relieved from any penalty incurred for the omission by anything contained in proviso (a).

The penalty for not affixing the stamp is a fine which may extend to Rs. 500 under S. 62 and for not cancelling the stamp, a fine which may extend to Rs. 100 under S. 63.

### Provincial Amendments.

#### Section 19A

##### BENGAL

After S. 19 of the main Act the following shall be inserted, namely :

“19A. Where any instrument has become chargeable in any part of British India other than Bengal with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in Bengal under clause (bb) of the first proviso to S. 3—

- (i) notwithstanding anything contained in the first proviso to S. 3, the amount of duty chargeable on such instrument shall be the amount chargeable on it under Sch. IA less the amount of duty, if any, already paid on it in British India ;
- (ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty”.

—Ben. Act III of 1922, S. 8. [1-4-1922.]

##### BIHAR

Same as that of Bengal, except, for the word “Bengal” wherever it occurs substitute the word “Bihar”.

—Bihar Act VI of 1937, S. 8. [1-1-1938]

4. ('41) 28 AIR 1941 Mad 868 (869) : 200

Ind Cas 342, *Sivasubramania v. Kalankarayan*.

5. ('41) 28 AIR 1941 Mad 868 (869) : 200

Ind Cas 342, *Sivasubramania v. Kalankarayan*.

6. (1874) 31 LT 372 (374) : 23 WR (Eng) 89, *Marc v. Rouy*.



**BOMBAY**

After S. 19, the following section shall be inserted :

*Payment of duty on certain instruments liable to increased duty in Bombay Presidency.* "19A. Where any instrument of the nature described in any article in sch. I and relating to any property situate or to any matter or thing done or to be done in the Presidency of Bombay is executed out of the said Presidency and subsequently received in the said Presidency—

- (a) the amount of duty chargeable on such instrument shall be the amount of duty chargeable under Sch. I on a document of the like description executed in the Presidency of Bombay less the amount of duty, if any, already paid on such instrument in British India,
- (b) and in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the duty chargeable on it under cl. (a) of this section, in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty, and
- (c) the provisions contained in cl. (b) of the proviso to sub-s. (3) of S. 32 shall apply to such instrument as if such were an instrument executed or first executed out of British India and first received in British India when it became chargeable to the higher duty aforesaid, but the provisions contained in cl. (a) of the said proviso shall not apply thereto."

—*Bom Act. II of 1932, Pt. IV, S. 15 (3). [1-4-1932]*

**CENTRAL PROVINCES**

Same as that of Bengal, except, for the word "Bengal" wherever it occurs substitute the words "the Central Provinces and Berar."

—*C. P. Act VI of 1939, S. 7. [1-7-1939.]*

**MADRAS**

Same as that of Bengal, except the following :

(a) For the words "other than Bengal....duty in Bengal" substitute the word<sup>s</sup> "other than the Presidency of Madras with duty under the Stamp law in force in that part of British India and thereafter becomes chargeable with a higher rate of duty in the said Presidency."

(b) At the end of cl. (ii) insert a comma and the word "and" and thereafter add the following clause :

"(iii) the provisions contained in cl. (b) or cl. (c), as the case may be, of the proviso to sub-s. (3) of S. 32 shall, with the necessary modifications, apply to such instrument, but the provisions contained in cl. (a) of the said proviso shall not apply thereto."

—*Madras Act VI of 1922, S. 7. [25-4-1922.]*

**ORISSA**

The same as that of Bengal, except, for the word "Bengal" where it first occurs substitute the words "the Province of Orissa" and where it occurs next, the words "the said Province."

—*Orissa Act VI of 1943, S. 8. [26-4-1943.]*

**PUNJAB**

Same as that of Bengal, except the following : For the word "Bengal" wherever it occurs substitute the words "the Punjab" and after the words and figure "proviso to S. 3" insert the words and figures "as amended by the Indian Stamp (Punjab Amendment) Act, 1922."

—*Punjab Act VIII of 1922, S. 10. [15-1-1923.]*



## SIND

Same as that of Bombay.

—*Sind Act I of 1938, S. 2. [31-3-1938.]*

## UNITED PROVINCES

The same as that of Bengal, except, for the word "Bengal" wherever it occurs<sup>s</sup> substitute the words "the United Provinces."

—*U. P. Act III of 1936, S. 7. [1-5-1936.]*

## D.—Of Valuations for Duty.

\*20. (1) Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency other than that of <sup>a</sup> [the Provinces], such duty shall be calculated on the value of such money in the currency of <sup>a</sup> [the Provinces] according to the current rate of exchange on the day of the date of the instrument.

(2) The <sup>b</sup> [Central Government] may, from time to time, by notification in the <sup>c</sup> [official Gazette] prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of <sup>a</sup> [the Provinces] for the purposes of calculating stamp-duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1).

- a. Substituted for "British India" by I. O.
- b. Substituted for the words "Governor-General in Council" by A. O.
- c. Substituted for the words "Gazette of India" by A. O.

## Notifications.

*Conversion of British or any foreign currency into the currency of British India.*

1. In exercise of the power conferred by sub-s. (2) of S. 20 of the Indian Stamp Act, 1899 (II of 1899), and of all other powers in this behalf and in supersession of the notification of the Government of India in the Department of Commerce, No. 348, dated the 13th January 1923, and all notifications amending the same, the Governor-General in Council is pleased to prescribe the following rates of exchange for the conversion of the currencies hereinafter specified respectively into the currency of British India for the purposes of calculating *ad valorem* duty on instruments chargeable therewith :

Currency	Sum	Equivalent in currency of British India.
British	£ 1 Sterling	Rs. a. p. 13 5 4

—Government of India, Finance Department (Central Revenues) Notification C. No. 125-Stamps/25, dated 18-9-1925 as amended by Notification No. 8-Stamps, dated 7-11-1931.

2. In exercise of the powers conferred by S. 20, sub-s. (2) of the Indian Stamp Act, 1899 (II of 1899), as applied to Administered Areas in the Hyderabad State, and of all other powers enabling him in that behalf, the Governor-General in Council is pleased to prescribe that, with effect from the 1st June 1934, and until further notice, one hundred rupees of the currency of British India shall be convertible in one hundred and sixteen Halli Sicca rupees for the purposes of calculating stamp duty.—Government of India, Foreign and Political Department Notification No. 201-I, dated 15-5-1934.

\*[1879—Ss. 19, 20 ; 1869—S. 10. Cf. (1870) 33 & 34 Viet., C. 97—S. 11; (1891) 54 & 55 Viet., C. 39—S. 6 (1).]



1. **Valuation for duty.**—This part of this Chapter (Ss. 20 to 28) deals with the mode of valuation of instruments for purposes of stamp duty where an *ad valorem* duty is payable.

The *ad valorem* duty under this Act may be prescribed with reference to a sum of money or with reference to the value of any property. Where the duty has been prescribed with reference to money and such money is expressed in the instrument in a foreign currency, this section lays down how the duty has to be calculated, namely, that it has to be calculated with reference to the rate of exchange which was current at the date of the instrument. Under sub-s. (2), the Central Government has power to issue Notifications prescribing rates of exchange for foreign currencies, and such rates are to be treated as the current rates for the purpose of sub-section (1).

Section 21 provides for cases in which the duty is prescribed with reference to the value of stock or other security. In such cases, it is laid down that the duty is to be calculated with reference to the average value of the security on the date of the instrument.

Under S. 22, the rate of exchange prevailing on the date of an instrument or the average value of a security on such a date, given in an instrument shall be *presumed* to be correct.

There is no specific provision dealing with cases in which the *ad valorem* duty is payable with respect to the value of any property other than securities. In such cases the market-value of the property on the date of the instrument is to be considered.

For further discussion, see Notes on Ss. 26 and 27.

2. **Notifications under the section regarding rates of exchange.**—See the Notifications given just below the text of this section.

**\*21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.**

Stock and marketable securities how to be valued.

1. **Marketable security—Meaning.**—See S. 2 (16A).

2. **Stock, meaning of.**—The English Stamp Act 1891, S. 122 defines stock thus :

“The expression “stock” includes any share in any stocks or funds transferable at the Bank of England or at the Bank of Ireland, and India promissory notes, and any share in the stocks or funds of any foreign or colonial state or Government, or in the capital stock or funded debt of any county council, corporation, company, or society in the United Kingdom, or of any foreign or colonial corporation, company, or society.”

The Indian Stamp Act does not give any definition of “stock”. The definition given in the English Act may be applied *mutatis mutandis*.

See also Art. 19, N. 3.

3. **Conveyance in consideration of shares in company.**—A conveyance in consideration of shares in a company would come under this section. Hence, under Art. 23, stamp duty will be payable on the value of the shares on the date of the conveyance.

\*[1879—S. 21. Cf. (1870) 33 & 34 Vict., C. 97—S. 12; (1891) 54 & 55 Vict., C. 39—S. 6 (1).]



*In the matter of Port Canning Ltd.*,<sup>1</sup> which was a case decided under the Act of 1869, a question arose as to the stamp duty payable in respect of such a conveyance. It was held by the Calcutta High Court that under Art. 15, Sch. 1 of the Act, the instrument was not liable to stamp duty. The reason was that the article only applied to conveyances for *money*—the language of the article being confined to cases where there was an “*amount paid or secured*.” Article 23 of the present Act is differently worded. It refers to the “*amount or value of the consideration*,” and clearly covers instruments where the consideration is not *money*.

In Mulla and Pratt's Stamp Act, Fourth Edn. (1941), p. 78, the above decision is stated to be due to the absence of a provision corresponding to this section in the Act of 1869. It will be seen that this has nothing to do with the question.

**\*22.** Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price.

**1. Scope of the section.**—This section relates back to Ss. 20 and 21. Hence, it applies only to instruments the stamp duty payable on which has to be computed with reference to the current rate of exchange (S. 20) or the average price of certain stock or security at the date of the instrument (S. 21). In such cases, the statement contained in the instrument itself as regards the current rate of exchange or the average price as the case may be is required by this section to be accepted as *prima facie* correct for the purpose of stamp duty.

The section does not apply to instruments not covered by S. 20 or S. 21. Even in such cases, if *ad valorem* duty is payable on an instrument, the value given in the instrument itself will be the value to be considered for purposes of stamp duty.

See for further discussion Notes on S. 27.

**† 23.** Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Instruments reserving interest.

#### Synopsis

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|---|---|
| <ol style="list-style-type: none"> <li>1. Scope of the section.</li> <li>2. “Interest is expressly made payable by the terms of an instrument.”</li> <li>3. Compound interest.</li> </ol> | <ol style="list-style-type: none"> <li>4. Instruments coming within the section. See Note 2.</li> <li>5. Acknowledgment of a debt.</li> <li>6. Calculation of stamp duty under the section.</li> <li>7. Stipulation for interest in a promissory note.</li> </ol> |
|---|---|

**1. Scope of the section.**—The section provides that where interest is expressly made payable under an instrument, stamp duty chargeable on such instrument is not affected by the provision as to interest; in other words, the stipulation as to interest is not to be taken into account in calculating the stamp duty.

\*[1879—S. 22. Cf. (1870) 33 & 34 Vict., C. 97—S. 13 ; (1891) 54 & 55 Vict., C. 39—S. 6 (2).]

†[1879—S. 23 ; 1869—S. 9.]

#### Section 21—NOTE 3

1. ('71) 16 Suth W R 208 (209, 210) (FB).



The section is not intended to apply to cases where the agreement for interest will affect the *character* or category of the instrument for purposes of stamp duty. (See Note 5.)

Though there is no provision corresponding to this section in the English Stamp Act, it is settled law that stamp duty is payable only on the principal sum secured by an instrument irrespective of any stipulation as to interest. (See Note 6.)

2. "Interest is expressly made payable by the terms of an instrument."—These words show that unless interest accrues under the instrument itself, the section will not apply. Thus, where the sum secured by a bond is made up partly of an old debt and partly of interest calculated according to the *sawai* system, stamp duty is payable on the whole sum secured by the bond.<sup>1</sup> But where the interest accrues under an instrument this section will apply although the interest payable is given as a lump sum and not a sum to be calculated at a certain rate.<sup>2</sup> In the undermentioned case,<sup>3</sup> however, a bond for a loan of Rs. 100 stipulated that the obligor was to pay twice the amount, i.e., Rs. 200 including Rs. 100 for interest, in certain instalments and in case of default of any one instalment the whole amount was to become due. It was held that the amount secured by the bond was Rs. 200 and therefore the bond must be stamped accordingly. It is submitted that the decision is not correct.

The explanation to S. 24 shows that in the case of a sale of property subject to a mortgage or other incumbrance interest must be included for the purpose of stamp duty.

3. **Compound interest.**—The section applies as much to compound interest as to simple interest. Therefore a stipulation to pay compound interest in an instrument need not be considered in calculating the stamp duty on the instrument.<sup>1</sup>

4. **Instruments coming within the section**—See Note 2.

5. **Acknowledgment of a debt.**—The heading of this part of the chapter namely, "of valuations for duty" shows that the section only refers to cases where *ad valorem* stamp duty is payable. The section provides that in such cases the duty is to be calculated as if there is no agreement as to interest. The section is not intended to apply to cases where the agreement for interest will affect the character or category of the instrument for purposes of stamp duty. Thus, an acknowledgment containing a promise to pay interest is not chargeable as an acknowledgment under Art. I. This section cannot be invoked in such a case so as to make the instrument chargeable as an acknowledgment and thus to nullify the provisions of that article.

#### Section 23—NOTE 2

1. ('82) 1882 Bom P J 352 (DB), *Khando v. Imam*. (A bond for Rs. 31-4-0 of which Rs. 25 were on account of a balance on a former bond and Rs. 6-4-0 by way of *sawai* or interest should bear a stamp of 4 annas.)
2. ('01) 3 Bom L R 133 (135), *Vithu v. Nathu*. (A bond secured an amount of Rs. 10 as principal money and as regards interest the bond provided "interest on this sum amounts to Rs. 2-8-0." Held that the bond should be stamped as for Rs. 10 (ten) only; and that the provision about interest should be left out of consideration for the purposes of Stamp

Act, 1899—26 Cal 179 not followed.)

- (87) 1887 Bom P J 35 (SB), *Samsudin v. Dhakli*. (1882 Bom P J 352 distinguished. In that case interest according to *sawai* system was added to an old debt and the whole converted into principal. Here the interest accrued under the bond itself.) Also see Art. 15 Note 5.
3. ('99) 26 Cal 179 (181) (DB), *Sambhu Chandra v. Krishna Charan*.

#### Section 23—NOTE 3

1. ('30) 17 AIR 1930 Cal 630 (631) 58 Cal 507 : 129 Ind Cas 407 (FB), *Barisal Rindan Samiti v. Sital Chandra*.



In the undermentioned case<sup>1</sup> decided under the corresponding S. 9 of the Act of 1869 it was held that an account stated and signed by the defendant in the plaintiff's account book and containing a stipulation for interest was sufficiently stamped as an acknowledgment. The decision is not good law as the present provision for the stamping of acknowledgment expressly excludes such an instrument.

Where an account written and signed by the debtor is addressed to the creditor and also contains a stipulation for interest, it amounts to an agreement and should be stamped under Art. 5 of the Act.<sup>2</sup>

An acknowledgment containing an express promise to pay the principal with interest on demand amounts to a promissory note.<sup>3</sup>

**6. Calculation of stamp duty under the section.**—Under the English law stamp duty is calculated on the principal sum secured by an instrument irrespective of any sum which may become due as interest under the terms of the instrument.<sup>1</sup> This is so even if interest is reserved from a date prior to that of the instrument.<sup>2</sup> It is also the law in India.<sup>3</sup> This section specifically provides that stamp duty on an instrument is to be calculated as if there is no provision as to interest therein.

The section, however, only applies to the *calculation* of stamp duty on an instrument, it does not apply to the determination of the category of an instrument for purposes of stamp duty. See Note 5.

**7. Stipulation for interest in a promissory note.**—As seen in Note 27 on S. 2 (22) the inclusion of a provision for the payment of interest does not affect the character of an instrument as a promissory note. But this is not due to the operation of this section which has nothing to do with it.

The fact that interest is made payable only if there should be default in paying the promised sum by a specified date does not make the instrument other than a promissory note.<sup>1</sup>

#### Section 23—NOTE 5

1. ('80) 4 Bom 326 (328) : 5 Ind Jur 259 (DB), *Gir Dhar Naran v. Umer Aju*.

Also see Art. 1 Note 1.

2. ('08) 35 Cal 111 (113) : 11 Cal W N 1120 (SB), *Mulchand Lala v. Kashibullah Biswas*.  
(01) 25 Bom 373 (375) : 2 Bom L R 1132 (SB), *Laxumibai v. Ganesh*.

Also see Art. 1 Note 5.

3. ('01) 3 Bom L R 839 (841) (SB), *Mathurbhai v. Dalpat*.

#### Section 23—NOTE 6

- 1.\*(1829) 23 R R 253 (254) : 106 E R 912, *Pruessing v. Ing*.

(1832) 131 E R 356 (359) : 8 Bing 146 (153), *Doe d. Scruton v. Snaith*.

(1852) 8 Ex 97 (105) : 19 L T (O S) 257 : 155 E R 1275 : 22 L J Ex 85 : 91 R R 387 (394), *Prudential Mutual Assurance Investment and Loan Association v. Curzon*.

(1831) 172 E R 892 (893) : 5 Car & P. 96,

*Dixon v. Robinson*.

2. (1834) 39 R R 886 (888) : 4 Tyr 726 (728), *Wills v. Noott*.

(1841) 56 R R 801 (804) : 151 E R 903 : 10 L J Ex 200, *Barker v. Smark*.

3. ('78) 1 Mad 378 (380) : 2 Ind Jur 168 (DB), *Narasayya Chetty v. Guruvappa Chetti*.

('69) 2 Beng L R (O C) 165 (166) : 12 Suth W R (O C) 1 (DB), *Gomez v. Young*. (Pro-note is sufficiently stamped if stamp covers principal amount mentioned in note.)

[See also ('08) 4 Nag L R 90 (94), *Kuar Laxman Rao v. Keshao*. (Stamp duty payable on mortgage-deed is according to principal amount secured by such deed—The same will be the value for purposes of registration also.)]

#### Section 23—NOTE 7

1. ('81) 3 All 260 (265) (FB), *Bansidhar v. Bu Ali Khan*.



The rule contained in this section applies also to promissory notes, and stamp duty on a promissory note is payable only on the principal sum mentioned in the note.<sup>2</sup>

Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.

**\*23A.<sup>a</sup> (1) Where an instrument (not being a promissory note or bill of exchange)—**

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under <sup>b</sup>[Article No. 5 (c)] of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

a. Section 23A was added by S. 3 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

b. Substituted for the words and figure "Article No. 5 (b)" by S. 3 of the Indian Stamp (Amendment) Act, 1912 (I of 1912).

#### Provincial Amendments.

##### BIHAR

Section 9 of the Bihar Stamp (Amendment) Act, VI of 1937 [1-1-1938] is as follows :

"9. In applying section 23A, 24 or 29 to any instrument chargeable with a higher rate of duty under the Bihar Stamp (Amendment) Act, 1937, the references in those sections to the several articles in Schedule I shall be deemed to be references to the corresponding Articles in Schedule IA."

*Applications of sections 23A, 24 and 29 to instrument chargeable with duty under Schedule IA.*

##### CENTRAL PROVINCES

Section 8 of the Central Provinces and Berar Indian Stamp (Amendment) Act, VI of 1939 [1-7-1939] is similar to section 9 of the Bihar Act printed above, except, for the words and figures "under the Bihar Stamp (Amendment) Act, 1937" substitute the words and figures "under this Act, as amended by the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939."

##### MADRAS

In sub-section (1) of section 23A after the word and figure "Schedule I" the words, figure and letter "or Article No. 4 (c) of Schedule IA as the case may be" shall be inserted.

—*Madras Acts VI of 1922, S. 8 [25-4-1922] and VI of 1923, S. 2.[20-3-1923.]*

##### ORISSA

Section 9 of the Orissa Stamp (Amendment) Act, VI of 1943 [26-4-1943] is similar to section 9 of the Bihar Act printed above, except, for the short title of the Bihar Act substitute the short title "the Orissa Stamp (Amendment) Act, 1943."

##### PUNJAB

In sub-section (1) for the word and figure "Schedule I" substitute the word, figure and letter "Schedule IA".—*Punjab Act VIII of 1922, S. 11. [15-1-1923.]*

##### UNITED PROVINCES

Same as that of the Punjab.—*U. P. Act III of 1936, S. 8. [1-5-1936.]*

<sup>a</sup>[Cf. (1891) 54 & 55 Vlt., C. 39—S. 23.]

2. ('69) 2 Beng L R (O C) 165 (166) : 12 Suth | W R (O C) 1 (D B), *Gomez v. Young*.



1. **Legislative changes.**—The section is new, having been inserted by Act XV of 1904.

The figure “5 (c)” was substituted for “5 (b)” by Act I of 1912.

2. **Scope of the section.**—This section corresponds to S. 23 of the English Stamp Act of 1891, and is intended to reduce the stamp duty payable on mortgages by deposit of *marketable securities*. The section says that the instrument given on the occasion of such deposit is only chargeable as an agreement under Art. 5 (c). In other cases, an agreement relating to deposit of title deeds as security is chargeable under Art. 6.

The section provides for three kinds of instruments :—

1. Instrument given on the occasion of deposit of marketable security as security for debt.
2. Instrument making redeemable or qualifying a duly stamped transfer, intended as a security, of any marketable security (cl. b).
3. Release or discharge of above.

In all these cases, the instrument is chargeable with duty as an *agreement*.

Where an agreement between a corporation and a contractor provides for the deposit by the contractor of certain Government promissory notes as security for the due performance of the contract and for the reimbursement from the deposit of the sums that may become payable by the contractor in the course of the contract, the agreement falls under this section and is chargeable with duty under Art. 5 (c).<sup>1</sup> Similarly, salt credit bonds providing for the deposit of Government promissory notes as security for the payment of duty are within this section.<sup>2</sup>

**\*24.** Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty :

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

**Explanation.**—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale :

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

\*[1879—S.24 ; 1869—S. 34 (b). Cf. (1870) 33 & 34 Viet., C. 97—S. 73 ; (1891) 54 & 55 Viet., C. 39—S. 57.]

Section 23A—NOTE 2

1. ('33) Mad S M p. 29. (Citing, B. P. 1680, Mis., 7th December 1909.)

2. ('33) Mad S M p. 29. (Citing, B. Ps. 3594-S., 13th November 1908; 3832-S., 8th December 1908.)



*Illustrations.*

(1) A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp-duty is payable on Rs. 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp-duty is payable on Rs. 10,000 less the amount of stamp-duty already paid for the mortgage.

**Provincial Amendments.****BIHAR**

Section 9 of the Bihar Stamp (Amendment) Act, VI of 1937, [1-1-1938] is as follows :

"9. In applying s. 23A, 24 or 29 to any instrument chargeable with a higher rate of duty under the Bihar Stamp (Amendment) Act, 1937, the references in those sections to the several articles in Sch. I shall be deemed to be references to the corresponding articles in Schedule I A."

**CENTRAL PROVINCES**

Section 8 of the Central Provinces and Berar Indian Stamp (Amendment) Act, VI of 1939, [1-7-1939] is similar to S. 9 of the Bihar Act given above, except, for the words and figures "under the Bihar Stamp (Amendment) Act, 1937" substitute the words and figures "under this Act, as amended by the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939."

**MADRAS**

In S. 24 after the word and figure "schedule I" the words, figure and letter "or Art. 16 of Sch. IA as the case may be" shall be inserted.

—*Madras Act VI of 1922, S. 9. [25-4-1922.]*

**ORISSA**

Section 9 of the Orissa Stamp (Amendment) Act, VI of 1943, [26-4-1943] is similar to S. 9 of the Bihar Act given above, except, for the short title of the Bihar Act substitute the short title "the Orissa Stamp (Amendment) Act, 1943".

**PUNJAB**

In the proviso to the section after the word and figure "Sch. I" insert the words figure and letter "or Sch. IA, as the case may be."

—*Punjab Act VIII of 1922, S. 12. [15-1-1923.]*

**SYNOPSIS**

- |   |  |
|---|--|
| 1. Legislative changes. See Notes 7 and 9.  | 8. Explanation—See Notes 9 to 11.  |
| 2. Analogous law.   | 9. Sale subject to mortgage or charge.   |
| 3. "In consideration, wholly or in part, of any debt due to him."                                   | 10. "Any unpaid mortgage-money or money charged, together with the interest (if any) due on the same." |
| 4. "Contingently."  | 11. Transfer of part of mortgaged property.  |
| 5. Transfer by one company in favour of another subject to payment of debentures of former company. | 12. Property sold to the mortgagee—See Note 13.  |
| 6. Leasehold property—Assignment of.  | 13. Proviso to the explanation.  |
| 7. Certificate of sale—Proviso.   |  |

1. Legislative changes.—See Notes 7 and 9.

2. Analogous law.—The corresponding provision in the English Stamp Act of 1815 (55 Geo. III, Ch. 184) ran as follows :



"Where any lands or other property shall be sold or conveyed in consideration, wholly or in part, of any sum of money charged thereon by way of mortgage, wadset or otherwise, and then due owing to the purchaser or shall be sold and conveyed subject to any mortgage, wadset, bond or other debt, or to any gross or entire sum of money to be afterwards paid by the purchaser, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty is to be paid."

The words "money to be afterwards paid by the purchaser" in the above provision were explained in *Marquis of Chandos v. Commissioners of Inland Revenue*<sup>1</sup> as follows :

"In the clause which is to define what is the consideration or purchase-money, the terms "to be paid by the purchaser" mean where it is stipulated that he is to pay it ; and the provision applies only to those cases, where, in consideration of the conveyance of the estate, the vendee agrees to pay a certain sum to the mortgagee or incumbrancer. Where the purchaser does not bind himself to pay it, but is left to pay it or not as he pleases, it cannot be a part of the consideration money."

In consequence of this decision an amendment was made in 1853. The amended section ran as follows :

"Where any lands or other property shall be sold and conveyed subject to any mortgage, wadset or bond, or other debt, or to any gross or entire sum of money, such sum of money or debt shall be deemed the purchase or consideration money or part of the purchase or consideration money as the case may be, in respect whereof the said *ad valorem* duty shall be paid, notwithstanding the purchaser shall not be or become personally liable, or shall not undertake or agree to pay the same, anything in any Act or otherwise to the contrary notwithstanding."

This provision made it absolutely clear that the liability, in the case of conveyance of an encumbered property to pay stamp duty on the amount of incumbrance depended in no way upon the purchaser being bound to discharge the incumbrance. In *Mortimore v. Inland Revenue Commissioners*<sup>2</sup> Baron Martin put the matter thus :

"The scope and object of the enactment is clear, namely that upon every purchase *ad valorem* duty shall be paid on the entire consideration which either directly or indirectly represents the value of the free and unincumbered corpus of the subject-matter of the sale."

The corresponding provision in the English Stamp Act of 1870 (33 & 34 Vict., c. 97) was included in s. 73 which ran as follows :

"Where any property is conveyed to any person in consideration wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty."

This provision was repeated in S. 57 of the English Stamp Act of 1891 (54 & 55 Vict., C. 39). (It may be noticed that the language of the main clause of S. 24 of the Indian Stamp Acts of 1879 and 1899 is also identical.)

#### Section 24—NOTE 2

JOA quia

1. (1851) 6 Ex 464 (481) : 155 E R 624 (632) :

12 A 2 2

20 L J Ex 269 : 17 L T (O S) 128. (Quoted in A I R 1931 Cal 193 : 58 Cal 33 (FB).)

2. (1864) 33 L J Ex 263 (266) : 133 R R 815 : 159 E R 347 : 10 L T (N S) 635.



It is well established by authorities that S. 73 of the English Stamp Act of 1870 did not alter the law laid down by Martin B. in *Mortimore v. Inland Revenue Commissioners*<sup>3</sup> decided under the Act of 1853. The principle enunciated in this decision has been upheld both under the Act of 1870 and 1891.<sup>4</sup>

3. **"In consideration, wholly or in part, of any debt due to him."**—Where A is indebted to B and A transfers certain property to him to wipe out the debt, the amount of debt will be deemed to be the consideration and duty will be chargeable on the amount of the debt.<sup>1</sup> Now suppose A is indebted to B to the extent of Rs. 1,000. An instrument is executed transferring A's property to B. Under the instrument B relinquishes part of the debt, say Rs. 300, and the property is transferred for a consideration of Rs. 700. In such a case the consideration for the transfer is clearly Rs. 1,000 and not merely Rs. 700. The fact that the instrument states that it is Rs. 700 does not make any difference when the instrument taken as a whole shows that the consideration is really Rs. 1,000.<sup>2</sup>

Where in a letter of assignment by a debtor to his creditor the amount of consideration was not set forth, it was held that the amount or value of consideration would be the amount or value of the debt (wholly or in part, as the case may be) due from the debtor to his creditor.<sup>3</sup>

Where a debtor by a letter authorized his creditor to receive a sum of money on his behalf, due to him by the Panjrapol authorities on account of fodder supplied, it was held that it was a transfer of property by the debtor to his creditor in consideration of a debt due to the latter within the meaning of this section.<sup>4</sup>

4. **"Contingently."**—The payment subject to which the transfer is made may be due certainly or contingently. The section will apply in either case.

5. **Transfer by one company in favour of another subject to payment of debentures of former company.**—In the undermentioned case<sup>1</sup> the whole undertaking of A company was transferred to B company. Under the transfer exchange was to be effected to the stock in A company for an equivalent amount of stock in B company, and A company's debts were to be paid by B company. It was held that *ad valorem* duty was chargeable on the amount of debts as well as on the stock which had to be valued not at its *nominal* value but the market-value at the time of the making of the instrument.

6. **Leasehold property—Assignment of.**—Where a tenant transfers his leasehold rights and the transferee undertakes to pay the rent reserved under the ori-

3. (1864) 33 L J Ex 263 (266) : 159 E R 347 : 10 L T (NS) 635 : 133 R R 815.

4.\*('31) 18 AIR 1931 Cal 193 (198) : 58 Cal 33 : 127 I. C. 775 (FB), *Janardhan Rao v. Secy. of State*.

#### Section 24—NOTE 3

1. ('91) 15 Bom 675 (677), *Sinapaya v. Shivapa*.

('33) Mad S M p. 91. (Citing, B. P. 987, 19th July 1880—A executed a document transferring all his property to his relation B, in consideration of certain sums paid at different times amounting to Rs. 344, plus Rs. 200, which was intended to be given to B for his maintenance—Held that the sum of Rs. 200 and Rs. 344 should be taken into account

in calculating the stamp-duty.)

2. ('35) 22 AIR 1935 Rang 243 (245) : 13 Rang 613 : 157 Ind Cas 538 (SB), *In re C. R. M. M. L. A. Chettyar Firm*.

('33) Mad S M p. 93. (Citing B. P. 1632-R, Mis., 13th August 1907.)

Also see Art. 23 Note 4.

3. ('03) 27 Bom 150 (153) : 4 Bom L R 951 (FB), *Nandubai v. Gau*.

4. ('03) 27 Bom 150 (153) : 4 Bom L R 951 (FB), *Nandubai v. Gau*.

#### Section 24—NOTE 5

1. ('1854) 33 L J Ex 173 (176) : 10 L T 161 : 13 W R (Eng) 10, *Furness Ry. Co. v. Commrs. Inland Rev.*



ginal lease no stamp duty is payable in respect of the undertaking on the part of the transferee to pay the rent. Duty is payable on only the actual consideration for the transfer.<sup>1</sup> This is so whether the rent payable by the transferee is the same as that reserved under the original lease or is only a part thereof.<sup>2</sup> The reason is that the undertaking to pay the rent is not part of the "consideration" for the transfer, but is incidental to the nature of the interest transferred.

**7. Certificate of sale—Proviso.**—The proviso renders this section inapplicable to a certificate of sale.

Under Art. 16 of the Act of 1879, the stamp duty for a certificate of sale was "the same duty as a conveyance for a consideration equal to the amount of the purchase-money." There was a conflict of decisions on the question as to the applicability of this section to certificates of sale. See Note 3 on Art. 18 of the present Act. However, Act VI of 1894 added the word "only" after the word "purchase-money" in the above article and also added the proviso to S. 24. Thus, it has been made clear that a certificate of sale is chargeable *only* in respect of the amount of the purchase-money, irrespective of whether the property is sold subject to an encumbrance or not.

**8. Explanation.**—See Notes 9 to 11.

**9. Sale subject to mortgage or charge.**—Where mortgaged property is transferred what is the stamp duty payable? Is the mortgage-money to be deemed part of the consideration for the transfer and duty to be paid on the same? This question has given rise to a conflict of opinions both under the Act of 1879 and the present Act.

The provision corresponding to this section in the Act of 1869 was contained in S. 34 (b) of that Act; it ran as follows:

"When any property is sold and conveyed subject to any mortgage or bond or other debt, or to any gross or entire sum of money, such debt or sum shall be deemed the consideration money or part of the consideration money (as the case may be) in respect whereof the duty chargeable in the first schedule to this Act shall be paid, notwithstanding the purchaser is not or does not become personally liable for such debt or sum, or does not agree to pay the same or to indemnify the seller against the same."

The last part of this section, namely, the words "notwithstanding the purchaser .....etc.," clearly indicated that duty was chargeable on the mortgage-money irrespective of whether the purchaser became personally liable for the debt or agreed to pay, or indemnify the seller against, the same. This provision was similar to that of the English Stamp Act of 1853.

Section 24 of the Stamp Act of 1879 was identical with the main clause of the present section,<sup>1</sup> the proviso and the explanation being subsequently added by the Act of 1899.

#### Section 24—NOTE 6

1. (1900) 24 Bom 257 (260): 2 Bom L R 401 (DB), *In re Stamp Act*, S. 57.
- (31) 18 AIR 1931 Bom 1 (2): 128 Ind Cas 898 (FB), *In re Punamehand Lallubhai Doshi*.
- (1900) 1 Q B 172 (176): 69 L J Q B 63: 81 LT 623: 48 W R (Eng) 197, *Swayne v. Inland Revenue Commissioners*. ((1899) 1 Q B 335, affirmed.)

Also see S. 25 Note 6; Art. 63, Note 3.

2. (1899) 1 Q B 335 (341), *Swayne v. Inland Revenue Commissioners*. (Affirmed in (1900) 1 Q B 172.)

#### Section 24—NOTE 9

1. It may be noted that it is also identical with the corresponding provision in the English Stamp Acts of 1870 and 1891, namely, Ss. 73 and 57 respectively.



In the absence of the proviso, S. 24 of the Act of 1879 was applied to a certificate of sale also. Under the present section it does not apply. (See Note 7.)

The section in the Act of 1879 gave rise to a conflict of opinion as regards duty payable where *mortgaged* property was sold. The words "subject....to the payment....of money" were interpreted differently by various High Courts.

The Madras view was that mortgage-money was to be deemed consideration only where the transferee *undertook* to pay it: not otherwise.<sup>2</sup> The Bombay view was that the section applied to every sale of mortgaged property.<sup>3</sup> It was held in Calcutta that only where the purchaser has to pay a certain sum in order to entitle him to the conveyance, it can be said that the sale is subject to the payment of money and hence the section applied only in such cases.<sup>4</sup> The Allahabad High Court was also of the opinion that the section did not apply to transfers of mortgaged property.<sup>5</sup>

To clear up this conflict the explanation was added by the Stamp Act of 1899. It is now clear that the section applies although it is not contemplated that the encumbrance must be paid off by the vendee as a condition precedent to his obtaining a conveyance and that *sales subject to mortgages* or charges are within the section. In such cases, though the mortgage-money is not *really* part of the consideration for the sale, it is to be *deemed* to be so for purposes of stamp duty.<sup>5a</sup>

The words "subject to a mortgage or other incumbrance" in the explanation qualify the word "sale" and not "property." Hence, where the *property* is subject to a mortgage but the *sale* is not, the explanation does not apply.<sup>6</sup> Thus, where the *mortgagor*, undertakes to pay off the mortgage it would not apply as the *sale* is not subject to mortgage.<sup>7</sup> On the other hand where the *purchaser* undertakes to pay the mortgage-money then the sale would be, evidently, subject to the mortgage, and the explanation would be applicable.

Is it, however, *necessary* that the purchaser should *undertake* to pay off the mortgage in order to make the sale "*subject to a mortgage*?" The Bombay High Court has held that it is necessary and the explanation should be limited to cases in which there is such undertaking.<sup>8</sup> The Calcutta High Court has held that an undertaking is not necessary for the application of the explanation.<sup>9</sup> It may be noted that in England under S. 73 of the Act of 1870 and S. 57 of the Act of 1891 (both of which

2. ('82) 5 Mad 18 (20) (FB), *Reference under Stamp Act, S. 49.*
- ('84) 7 Mad 421 (422) (FB), *Reference under Stamp Act, S. 46.*
3. ('85) 9 Bom 47 (49): 1884 Bom P J 260, *In re Ramkrishna.*
- ('91) 15 Bom 532 (535) (FB), *Kaisur Khan v. Ebrahim Khan.*
- ('81) 5 Bom 470 (477) (FB), *Sha Nagindas v. Halal Kore Nathwa.*
- ('94) 18 Bom 175 (177) (FB), *Shantappa Chedambaraya v. Subrao Ramchandra.*
4. ('84) 10 Cal 92 (95): 13 Cal L Rep 164 (FB), *In the matter of a Reference to the Board of Revenue.*
5. ('92) 15 All 107 (108): 1892 All W N 243, *Jwala Prasad v. Ram Narain.*
- 5a. ('31) 18 AIR 1931 Cal 193 (196): 58 Cal 33:127 Ind Cas 775 (FB), *Janardhan Rao v. Secy. of State.*
- 6.\*('31) 18 AIR 1931 Cal 193 (195): 58 Cal 33:127 Ind Cas 775 (FB), *Janardhan Rao*

- v. Secretary of State.* (If property is subject to a mortgage but the vendor in return for the purchase-money is to give clear title free from all encumbrances the explanation does not apply. Nor does the 2nd illustration apply, for, the case there put is not a sale free from the encumbrances.)
- †('24) 11 AIR 1924 Bom 524 (526): 49 Bom 73:84 Ind Cas 421 (DB), *Waman Martand v. Commissioner, Central Division.*
- ('37) 24 AIR 1937 Nag 57 (58): ILR (1937) Nag 432:166 Ind Cas 681, *In re Trimbak Madhao.*
7. ('24) 11 AIR 1924 Bom 524 (526): 49 Bom 73:84 Ind Cas 421 (DB), *Waman Martand v. Commissioner, Central Division.*
8. ('24) 11 AIR 1924 Bom 524 (526): 49 Bom 73:84 Ind Cas 421 (DB), *Waman Martand v. Commissioner, Central Division.*
- 9.\*('31) 18 AIR 1931 Cal 193 (196): 58 Cal 33:127 Ind Cas 775 (FB), *Janardhan Rao v. Secy. of State.*



are identical with the main clause of this section—the explanation not being added) the view of the Calcutta High Court has been adopted. (See Note 2.)

The goodness or badness of the mortgagor's title to the property transferred in no way affects the question of stamp duty. The instrument has to be stamped according to the intent of the bargain which it represents.<sup>10</sup> So also the mere fact that the instrument does not expressly say that the sale is subject to incumbrance does not bar the application of this section where from the document read as a whole it is clear that the sale is subject to incumbrance. The undertaking by the vendee to pay the mortgage-money may be express or implied.<sup>11</sup>

An *attachment* is not an incumbrance on the property. Hence, where property under attachment is sold, stamp duty need not be paid on the amount for which the property has been attached.<sup>12</sup>

10. “Any unpaid mortgage-money or money charged, together with the interest (if any) due on the same.”—The portion of the mortgage or other incumbrance and the interest on it, which are wiped out by “scaling down” under the Madras Agriculturists Relief Act, 1938, do not fall under the category of “unpaid mortgage-money or money charged, together with interest due on the same” referred to in the explanation to this section and cannot, therefore, be deemed to be part of the consideration.<sup>1</sup>

The explanation makes it clear that interest is deemed to be part of the consideration. The undermentioned case<sup>2</sup> decided under the old Act which holds to the contrary is therefore no longer good law.

11. **Transfer of part of mortgaged property.**—Where a part of the mortgaged property is sold subject to the mortgage, the whole mortgage-money is deemed consideration for the transfer and stamp duty has to be paid on this amount together with the sale price.<sup>1</sup>

12. **Property sold to the mortgagee.**—See Note 13.

13. **Proviso to the explanation.**—The proviso to the explanation deals only with cases of transfer of mortgaged property to the mortgagee.<sup>1</sup> In such cases the

10. ('31) 18 AIR 1931 Cal 193 (194): 58 Cal 33: 127 Ind Cas 775 (FB), *Janardhan Ram v. Secy. of State*.

11. ('37) 24 AIR 1937 Nag 57 (58): I L R (1937) Nag 432: 166 Ind Cas 681, *In re Trimbak Madhao*.

12. ('24) 11 AIR 1924 Bom 524 (524): 49 Bom 73: 84 Ind Cas 421 (DB), *Waman Martand v. Commissioner, Central Division*.  
Section 24—NOTE 10

1. ('33) Mad S M p. 30. (Citing, G. O. Ms. No. 1717, Revenue, 7th July 1938.)

2. ('81) 5 Bom 470 (474) (FB), *Sha Nagindas v. Halalkore Nathwa*.

Section 24—NOTE 11

1. ('40) 27 AIR 1940 Bom 360 (360): I L R (1941) Bom 23: 191 Ind Cas 382 (SB), *Superintendent of Stamps v. Tejmal Nihalchand*.  
(‘86) 10 Bom 58 (59) (FB), *In re Vishnu Keshav*.  
(‘84) 1884 Bom P J 261, *Gulam Mahomed v. Magan*.

(‘84) 1884 Bom P J 98 (DB), *Pandurang v. Balaji*.

[But see ('31) Beng S M Vol 1 p. 27. (Part

of mortgage property sold—What portion of the mortgage money falls to the account of the property sold must be determined by finding the market value of the whole of the mortgage property—Stamp duty should be paid on this amount plus the sale price.)

(‘40) Bihar S M p. 110-111. (Citing, Board's No. 10790-B, dated the 7th December 1904 (Do.))

Section 24—NOTE 13

1. See ('10) 32 All 171 (174): 5 Ind Cas 697 (DB), *Emperor v. Rameshar Das*. (Property sold by A to B for Rs. 20,000—B paid Rs. 1,000 in cash and Rs. 19,000 were to remain as deposit with B to be payable when demanded—Property re-conveyed to A—Deed mentioning only Rs. 1,000 as consideration and stamped with respect to Rs. 1,000 only—Held that the whole consideration had to be disclosed under S. 27—Duty was payable on the whole amount of Rs. 20,000—The proviso to the explanation would not apply.)



previous transaction of mortgage is really a part of the final transfer to the mortgagee; hence to avoid double payment of stamp duty, the amount of duty already paid in respect of the mortgage is allowed to be deducted.<sup>1a</sup> In order to get the benefit of this proviso it is not necessary that the transfer must be to the *original* mortgagee. The proviso can be availed of even in cases of transfer to a transferee from or successor of the mortgagee who steps into his shoes.<sup>2</sup>

The proviso applies only to those cases where the *whole* of the property under mortgage is transferred by the instrument in respect of which duty is to be determined. Where the instrument transfers only a *part* of the mortgaged property no deduction can be allowed.<sup>3</sup> This is so even in cases where the property transferred by the instrument to the mortgagee, comprises, together with the property already transferred to him by other instruments, the *whole* of the mortgaged property.<sup>4</sup>

The fact that the instrument transfers, in addition to the mortgaged property, other property does not bar the benefit of this proviso.<sup>5</sup> See also the undermentioned case.<sup>6</sup>

**\*25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be,—**

- (a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;
- (b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due; and

\*[1879—S. 25; 1869—S. 12; 1862—Sch. A, Art. 24. Cf. (1870) 33 & 34 Vict., C. 97—S. 72; (1891) 54 & 55 Vict., C. 39—S. 56.]

1a. Westland in his speech when presenting the report of the Select Committee.

[See also ('33) Mad S M p. 94. (Citing, B P 934-R., Mis 5th July 1910—Estate mortgaged by A to B for Rs. 9,613—Rs. 4,370 remaining due under mortgage at time of sale of estate by A to B for Rs. 15,000, so that under illustration (i) stamp duty of Rs. 195 was chargeable on Rs. 19,370—Held that deduction could be allowed only in respect of duty chargeable on the unpaid amount of Rs. 4,370.)]

2. ('03) 5 Bom L R 523 (524) (FB), *Reference under Stamp Act.*

('33) Mad S M p. 30. (Citing, B P 140/1384-R., Mis., 3rd June 1901.)

3. ('05) 29 Bom 203 (206, 207): 6 Bom L R 844, *In re Nirabai*. (An enactment imposing a burden requires a strict construction in favour of the subject but exemptions in

the Stamp Act must be construed strictly in favour of the State.)

('26) 13 A I R 1926 Bom 542 (543): 50 Bom 640: 98 Ind Cas 282 (FB), *In re Frank Portlock.*

('33) Mad S M p. 30. (Citing, B P 250/1458-R., Mis. 14th November 1911.)

('33) Mad S M p. 94. (Citing, B P 250-R./Mis., 2nd March 1914.)

4. ('26) 13 A I R 1926 Bom 542 (543): 50 Bom 640: 98 Ind Cas 282 (FB), *In re Frank Portlock.*

5. ('02) 4 Bom L R 430 (431) (FB), *Reference under the Stamp Act.*

6. (1835) 111 E R 722 (723): 4 Ad & El 94 (94), *Pooley v. Goodwin*. (Mortgage debt exceeding value of property mortgaged—Deed of transfer to the mortgagee is to be stamped as conveyance.)



- (c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

## Synopsis

- |  |                                       |
|--|---------------------------------------|
| 1. Instrument securing payment of annuity or other sum payable periodically.     | instalments.                          |
| 2. Life-policy, annuities secured by.  | 5. Lease, whether section applies to. |
| 3. Consideration for conveyance being annuity or other sum payable periodically. | 6. Lease-hold property, sale of.      |
| 4. Covenant for payment of consideration by                                      | 7. Clause (a).                        |
|  | 8. Clause (b).                        |
|  | 9. Clause (c).                        |

1. **Instrument securing payment of annuity or other sum payable periodically.**—This section, unlike the English Stamp Act, places an instrument securing the payment of an annuity or other sum payable periodically and conveyance having for its consideration an annuity or other sum payable periodically on the same footing for determining valuation for the purpose of stamp duty. Schedule I of the English Stamp Act under the heading “Bond, Covenant or Instrument of any kind whatsoever” gives the stamp duty payable when the instrument is the only or primary or principal security for any annuity or for any sum or sum of money at stated periods.

By an agreement between the owner and the manager of a hotel, the manager was, until determination of the agreement, to carry on the business of hotel proprietor and to have entire control of the business without interference by the owner; he was to receive the whole of the receipts and profits, to pay all necessary outgoings and to pay to the owner a fixed sum per week. No period was fixed for the duration of the agreement which contained powers for its determination by either party in certain events. It was held that the agreement was a security, for an indefinite period, for the payment of a sum of money at weekly periods and not for an annuity or yearly sum payable by weekly instalments and was therefore liable to *ad valorem* duty upon the sum agreed to be paid weekly and not upon the total amount of such weekly payments for a year.<sup>1</sup>

By a separation deed between a husband and wife the husband covenanted to pay the wife for her separate use without power of anticipation the sum of £625 every three months by quarterly payments on the 29th day of September, the 25th day of December, the 25th day of March and 24th day of June in every year. It was held that the deed was a security for an annuity or yearly sum payable by quarterly instalments and not for a sum of money payable at quarterly periods and that it was therefore liable to *ad valorem* duty upon the amount of the annuity and not upon the sum payable quarterly.<sup>2</sup>

A *life-policy* securing payment of an annuity is not an instrument securing payment of an annuity within the meaning of this section. (See Note 2.)

A lease is not an instrument securing the payment of an annuity or other sum payable periodically.

Interest payable on a mortgage is a “sum payable periodically” within the meaning of this section. Where, therefore, a mortgagor makes over a certain land

## Section 25—NOTE 1

1. (1896) 2 Q B 187 (195): 65 L J Q B 582: 74 L T 699: 45 W R (Eng) 14, *Clifford v.*

*Commissioners of Inland Revenue.*  
2. (1898) 2 Q B 290 (293): 67 L J Q B 694: 78 L T 745, *Lewis v. Inland Revenue Commissioners.*



to the mortgagee as security for the payment of interest due by him on the mortgage, previously executed by him, the rate of interest on the mortgage amount should be ascertained and the stamp duty calculated thereon under the provisions of this section.<sup>3</sup>

**2. Life-policy, annuities secured by.**—Clause (c) of this section deals with contracts under which for some executed consideration money becomes immediately due, though payable by fixed periodical payments. This is not the case with a life-policy securing an annuity. This section is, therefore, not applicable to a life-policy securing an annuity and there is no provision in the Stamp Act which can relate to the valuation of annuities secured by life-policies.<sup>1</sup> Hence, an Entrance Certificate granted under the rules of the Uncovenanted Service Family Pension Fund does not come within the scope of this section.<sup>2</sup>

**3. Consideration for conveyance being annuity or other sum payable periodically.**—Where there is a conveyance for a lump sum plus an annual payment, the annual payment is part of the consideration for the conveyance and the conveyance comes within this section.<sup>1</sup>

A sum payable periodically includes a sum payable by instalments.<sup>2</sup>

This section should be read with S. 24 which provides that where any property is transferred subject either certainly or contingently to the payment of money, such money may be deemed to be the whole or part of the consideration as the case may be, in respect whereof the transfer is chargeable with *ad valorem* duty.

The words "sum payable periodically" in this section will include money payable on a contingency.<sup>3</sup>

**4. Covenant for payment of consideration by instalments.**—Section 56 of the English Stamp Act, 1891, (corresponding to this section) contains a proviso to the effect that no conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also a provision for securing the payments, is to be charged with any duty in respect of such provision; and further, that if any separate instrument is made for securing the payments, it is not to be charged with any higher duty than ten shillings.

In *Limmer Asphalte Paving Company v. Commissioners of Inland Revenue*,<sup>1</sup> by an indenture between a company and a licensee, in consideration of £7500 of which £1500 was then paid and the remaining £6000 was to be paid in six monthly instalments of £1000, the company granted to the licensee the business of asphalt-paving. It was held that payment by instalments was a periodical payment and

3. ('33) *Mad S M p.* 115. (Citing, *B P* 1060, 11th May 1886.)

Section 25—NOTE 2

1. ('92) *19 Cal* 499 (503) (DB), *Reference under Stamp Act*, S. 46.

2. ('92) *19 Cal* 499 (503) (DB), *Reference under Stamp Act*, 1879, S. 46.

Section 25—NOTE 3

1. (1904) *91 LT* 453 (456), *Martin v. Inland Revenue Commissioners*. (A sold a piece of land to B for £59 subject to and charged with the payment to A and his assigns of the annual sum of 1s.—*Held*, that the annual payment of 1s. per annum was part of the

consideration for the sale.)

2. (1872) *7 Ex* 211 (217): *41 LJ Ex* 106: *26 LT* 633: *20 WR* (Eng) 610, *Limmer Asphalte Paving Co. v. Commissioners of Inland Revenue*.

3. (1906) *1906 App Cas* 21 (23): *54 WR* (Eng) 381: *75 LJK B* 117: *93 LT* 819, *Underground Electric Ry. Co. of London v. Inland Revenue Commissioners*. (1905) *1 KB* 174 affirmed.)

Section 25—NOTE 4

1. (1872) *7 Ex* 211 (217): *41 LJ Ex* 106 *20 WR* (Eng) 610: *26 LT* 633.



only one duty could have been charged in respect of £7500 and not a second duty in respect of the covenant to pay by instalments the £6000 remaining unpaid.

This section contains no such proviso.

5. **Lease, whether section applies to.**—This section applies where the consideration for a conveyance is an annuity or other sum payable periodically. According to the definition of “conveyance” in S. 2 (10), “conveyance” includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I. Lease is specifically provided for by Art. 35 of Sch. I and hence it is not a conveyance within the meaning of S. 2 (10). Nor can a lease be said to be an “instrument securing the payment of an annuity or other sum payable periodically” as the securing of such payment is not the main object of a lease. Section 25 has therefore no application to a lease. But the section may apply to the transfer of a lease.<sup>1</sup>

6. **Leasehold property, sale of.**—Where leasehold property demised to the original lessee is assigned by him for a certain consideration and the assignee has agreed to pay the rent reserved by the original lease, the payment of the rent reserved by the deed cannot be taken to be part of the consideration for the conveyance. The *ad valorem* duty is, therefore, payable *only* on the consideration money actually mentioned in the conveyance, (namely, the amount of the purchase-money).<sup>1</sup>

7. **Clause (a).**—When the number of payments to be made is fixed by the instrument, the consideration for the purpose of assessing the stamp payable on the instrument is the total sum payable during the period irrespective of the fact that the payments may cease or be terminated by act of parties before the expiry of the period fixed.<sup>1</sup>

8. **Clause (b).**—Clause (b) applies when the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of the instrument or conveyance. Clause (b) corresponds with sub-s. (2) of S. 56 of the English Stamp Act of 1891. The following decisions decided under section 56 (2) of the English Stamp Act will therefore be helpful:

A company agreed by a deed to sell certain assets to another company. The deed provided that the profits of the buying company should be applied first in payment of a dividend at 5 per cent. per annum on the paid up capital and secondly in paying to the selling company, for the sale, a sum equal to 3 per cent. of the paid up capital per annum. It was held that the 3 per cent. dividend was “money payable periodically for an indefinite period not terminable with life” within meaning of S. 56 (2) even though it was subject to a contingency, namely, the existence of a sufficiency of profits to pay first a dividend of 5 per cent.<sup>1</sup>

#### Section 25—NOTE 5

1. ('39) 26 A I R 1939 Bom 215 (219): ILR (1939) Bom 320: 182 Ind Cas 835, *Dewarkhand Cement Co. v. Secy. of State*.

#### Section 25—NOTE 6

1. (1900) 24 Bom 257 (260): 2 Bom L R 401 (SB), *In re Indian Stamp Act*, S. 57.
  - (31) 18 A I R 1931 Bom I (2): 128 Ind Cas 898 (FB), *In re Punamchand*.
- Also see S. 24 Note 6 and Art. 63 Note 3.

#### Section 25—NOTE 7

1. ('39) 26 A I R 1939 Bom 215 (219, 220): I L R (1939) Bom 320: 182 Ind Cas 835,

*Dewarkhand Cement Co. Ltd. v. Secretary of State*. (Lease of mine and quarry for 99 years on payment of annual royalty—Provision for termination within period at any time on six months' notice in writing on certain contingencies—Transfer of rights by lessee.)

#### Section 25—NOTE 8

1. (1906) 1906 App Cas 21 (23): 75 L J K B 117: 93 L T 819: 54 W R (Eng) 381, *Underground Electric Ry. Co. of London v. Inland Revenue Commissioners*. ((1905) 1 K B 174 affirmed.)



A sold a piece of land to B for £50 subject to and charged with the payment to A and *his assigns* of the annual sum of 1s. It was held that the annual payment of 1s. was part of the consideration for the sale and the whole consideration for the sale under S. 56 (2) was £50 plus 1s. multiplied by twenty, namely £51.<sup>2</sup>

By an agreement between a Railway Company and an Automatic Machine Company, the former agreed to permit the latter to place automatic machines on the platforms of certain of their stations. The Automatic Machine Company agreed to pay to the Railway Company a yearly rent by equal quarterly payments on the usual quarter days. The agreement contained a provision enabling either party to determine it by three months' notice expiring at any time. It was held that the agreement was chargeable with duty under the head "bond, covenant, or instrument of any kind whatsoever" as being the only principal or primary security for an annuity or for a sum of money at stated periods for an indefinite period.<sup>3</sup>

By an agreement it was agreed between a telephone company and one R that the latter should pay to the company the sum of £12 per annum in advance for the hire of a private wire between his premises and the company's local exchange system and the telephonic apparatus relating thereto. It was held that the agreement was chargeable under cl. (1) of the heading "Bond, Covenant, or instrument of any kind whatsoever" in the first schedule to the Stamp Act and not merely with stamp duty as an agreement.<sup>4</sup>

9. **Clause (c).**—Clause (c) refers to cases where the sum is payable for an indefinite time *terminable with any life in being at the date of the instrument or conveyance*. Where by an award a certain sum was made payable monthly to a certain person, but without any mention whether the sum was secured or intended to be secured to the heirs or representatives of the person to whom it was payable, it was held that the award ought to be stamped as a document securing an annuity under cl. (c) of this section.<sup>1</sup>

See also Note 2.

**\*26.** Where the amount or value of the subject-matter of any instrument chargeable with ad valorem duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient :

<sup>a</sup>[Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

\*[1879—S. 26 ; 1869—S. 11 ; 1862—S. 27 ; 1860—S. 14.]

2. (1904) 91 L T 453 (456), *Martin v. Commissioners of Inland Revenue*.

3. (1895) 1 Q B 484 (493) : 71 L T 763 : 43 W R (Eng) 318 : 64 L J Q B 84, *Sweetmeat Automatic Delivery Co. v. Commissioners of Inland Revenue*.

4. (1899) 1 Q B 250 (258) : 68 L J Q 222 :

79 L T 514 : 47 W R (Eng) 247, *National Telephone Co. Ltd. v. Commissioners of Inland Revenue*. (Affirmed in 1900 App Cas 1.)

Section 25—NOTE 9

1. ('96) 1896 All W N 197 (197) (DB), *Reference under Stamp Act, I of 1879*.



(a) when the lease has been granted by or on behalf of <sup>b</sup> [the Crown], at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to <sup>c</sup> [the Crown] under the lease ; or

(b) when the lease has been granted by any other person, at twenty thousand rupees a year ;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease :]

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

a. The proviso was substituted by S. 4 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

b. Substituted for the words "the Secretary of State in Council" by A. O.

c. Substituted for the words "the said Secretary of State in Council" by A. O.

#### Synopsis

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| <ol style="list-style-type: none"> <li>1. Any instrument chargeable with ad valorem duty.</li> <li>2. Instruments not liable to any stamp duty.</li> <li>3. When amount or value of the subject-matter cannot be ascertained.</li> <li>4. Instrument for delivery of grain or other article—Valuation.</li> <li>5. Lease reserving grain rent.</li> <li>6. Mortgage to secure balance of a running account.</li> <li>7. Stipulation for penalty.</li> <li>8. Assignment of debt.</li> <li>9. Instruments carrying interest. See Notes</li> </ol> | <ol style="list-style-type: none"> <li>on S. 23.</li> <li>10. Deed not specifying value of property. See Notes on S. 27.</li> <li>11. Document insufficiently stamped under mistake.</li> <li>12. Amount or value of the subject-matter capable of ascertainment—Effect.</li> <li>13. "Nothing shall be claimable."</li> <li>14. "Claimable" meaning of.</li> <li>14a. Certificate of Collector—Second Proviso.</li> <li>15. Admissibility of document not affected.</li> <li>16. This section and S. 35.</li> <li>17. Objection on appeal.</li> </ol> |
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1. Any instrument chargeable with ad valorem duty.—For the applicability of this section it is necessary that the instrument must be one chargeable with *ad valorem* duty. Where the instrument is chargeable with a fixed duty this section does not apply.<sup>1</sup> Thus, a combination of an agreement of service and a security bond in which no limit is defined falls under Art. 5 (c) and Art. 57 (b) and is chargeable with a fixed duty and hence S. 26 does not apply to such an instrument.<sup>2</sup> Similarly, a combination of assignment of a mortgage bond and a security bond in which no limit is fixed is chargeable with a fixed duty under Art. 62 (c) and Art. 57 (b) and hence S. 26 does not apply to it.<sup>3</sup>

2. Instruments not liable to any stamp duty.—Section 26 applies only when the instrument is liable to *ad valorem* duty and can have no application when no

#### Section 26—NOTE 1

1. ('24) 11 AIR 1924 Nag 408 (409) : 78 Ind Cas 956 *Nilkanth v. Kesheorao*. (Where no limit is defined in a security-bond or the limit is exceeded, the instrument falls under clause (b) of Art. 57 of Sch. I to the Stamp Act and a fixed duty is payable thereon—S. 26 has no application to such an instrument.) ('04) 27 Mad 71 (74) (DB), *McDowell & Co. v. Ragava Chetty*. (Held that the first part of the instrument was only the transfer

of a mortgage, and as such liable to a fixed stamp duty under Art. 62, Cl. (c) of Sch. I of the Indian Stamp Act, and that the stamp duty payable as to the second part was also a fixed duty (Art. 57 Cl. (b) of Sch. I) and that S. 26 of the Act had no application to the case.)

2. ('24) 11 AIR 1924 Nag 408 (409) : 78 Ind Cas 956, *Nilkanth v. Kesheorao*.
3. ('04) 27 Mad 71 (74), *McDowell & Co. v. Ragava Chetty*.



duty is payable on the instrument.<sup>1</sup>

3. When, amount or value of the subject-matter cannot be ascertained.—By the words “subject-matter of any instrument” is meant the matter with reference to which the *ad valorem* duty (if any) on the instrument is to be computed.

The section clearly applies to cases in which the *value* of the subject-matter of the instrument is not capable of ascertainment at the date of the instrument. In the undermentioned case,<sup>1</sup> it was held that the section only applied where not only the market-value of the subject-matter of the instrument at the date of its execution but also the amount or quantity of the article (forming the subject-matter and secured by the instrument) is not capable of ascertainment at the date of its execution. It is submitted that this view is at variance with the express words of the section and is not correct.

Where the instrument is chargeable with *ad valorem* duty according to the value of some grain or other article to be delivered in future, the market-value of the thing at the future date being incapable of ascertainment at the date of the instrument this section will apply to the instrument. (See Note 4.)

As to whether the mention, in the instrument, of a certain amount as the value of the subject-matter will take such instrument out of the purview of this section, see Note 4.

A grower of sugarcane executed an instrument whereby he acknowledged receipt of a sum of Rs. 25 as earnest money and covenanted to deliver to the lender on a certain date 21 maunds of *rab* upon which he was to receive a profit of 9 annas per maund over and above a *price to be thereafter fixed* at a meeting of growers. In determining the amount of duty payable on the instrument it was held that the price fixed at the meeting of the growers not having been ascertainable at the time of the execution of the instrument fell within the provisions of S. 26 and could not have the effect of adding to the stamp duty payable.<sup>2</sup>

A took a lease for three years from B of a certain land and agreed to pay B the value of a certain quantity of paddy, plus a sum of money as rent each year. The value of the paddy was to be fixed by B each year. It was held that the case fell within the provisions of S. 26.<sup>3</sup>

A certain deed purported to be a transfer of the executant's claim for Rs. 4500 deposited in the High Court, which was to be paid only in the event of the Privy Council deciding in favour of the executant. The consideration was the promise of the party in whose favour the document was executed to pay for the executant being duly represented before the Privy Council. The amount of consideration was thus not known and therefore the section was held to apply to the case.<sup>4</sup>

#### Section 26—NOTE 2

1. ('18) 5 AIR 1918 Mad 1066 (1067, 1068) : 39 Ind Cas 448 (DB), *Seshayya v. Venkata Subbayya*.

#### Section 26—NOTE 3

1. ('18) 5 AIR 1918 Mad 1066 (1067, 1068) (DB), *Seshayya v. Venkata Subbayya*. (Under a document defendant was to plant at least 50,000 trees—Plaintiff was to be entitled to half the quantity of the trees—Held, S. 26 did not apply to the instrument.)
2. ('87) 9 All 585 (588, 589) : 1887 All WN 190 (FB), *In re Gajraj Singh*. (Per Stuart,

C. J.)

3. ('81) 3 Mad 342 (346, 347) (FB), *Collector of Tanjore v. Ramasamier*. (Case under Act of 1869—Duty under the Act was *ad valorem* on first year's rent—First year's rent unascertainable—Effect of S. 26 is only to limit the first year's rent recoverable under the deed to the amount covered by the stamp—Rent of subsequent years not affected by S. 26.)

Also see Note 4.

4. ('33) Mad S M p. 160. (Citing, B P 2205, 2nd August 1879.)



4. **Instrument for delivery of grain or other article—Valuation.**—Where an instrument is given for delivery of a certain amount of grain at a future date, but the instrument itself mentions the value of the grain, the value of the subject-matter of the instrument cannot be said to be incapable of ascertainment at the date of the execution of the instrument. The value as given by the parties is the value of the subject-matter of the instrument for purposes of stamp duty. To such a case, this section does not apply. Hence, where a suit is brought on the instrument for the recovery of the grain or its value the plaintiff is not precluded from recovering the full market-value of the grain at the date of the suit and his right is not confined to recovering the value as stated in the instrument.<sup>1</sup> On this principle, where a lease reserves a certain quantity of grain or other produce to be delivered every year as rent or part of rent, and the lease-deed mentions the monetary value of the grain also, and the Court considers such value to be a fair average value of the grain, this section will not apply and the landlord may recover the full market-value of the grain on the date of the suit.<sup>2</sup> But, where the lease makes the value of a certain quantity of grain payable and does not state any amount as its value, this section will clearly apply.<sup>3</sup>

The foregoing represents the effect of the case-law on this part of the subject. But it may be doubted whether the mere fact that the parties to an instrument mention a certain amount as the value of a certain thing which is to be delivered at a future date will make its value capable of ascertainment at the date of the instrument. The fact that the proviso *expressly* provides for the value stated in the document being regarded as the value of the subject-matter of the instrument in certain cases indicates that in the absence of such express provision, the mere fact of the mention of a certain amount in the instrument as the value of the subject-matter will not take the case out of the section.

5. **Lease reserving grain rent.**—Under the Stamp Act of 1869, in the case of a lease for a period of three years or for a period exceeding three years the duty chargeable was on the total amount of rent payable in the first year. Where the amount payable in the first year could not be ascertained at the date of execution of the instrument, it was held that sufficient effect could be given to the terms of the Stamp Act by holding that in respect of the *first* year the plaintiff could not recover more than the value covered by the stamp duty, but that in regard to the subsequent years, such a restriction was not applicable.<sup>1</sup>

Under the Stamp Act I of 1879 in the case of a lease exceeding 3 years, the duty payable was on the amount or value of the average *annual* rent reserved. (It is the same under the present Act). Referring to this alteration of the basis of stamp duty and its effect on this section the Madras High Court observed as follows<sup>2</sup>:

## S. 26 NOTE 4

1. ('86) 13 Cal 268 (269) (DB), *Bhairab Chundra v. Alek Jan.*

[See also ('39) 26 AIR 1939 Pat 49 (54): 18 Pat 141: 179 Ind Cas 549 (DB), *Muham-mad Yunus v. Champamani Bibi.* (Assignment by way of gift, of bond for Rs. 800—Value of gift stated in assignment deed as Rs. 400—Value of subject-matter of assignment deed not incapable of ascertainment.)]

2. ('94) 4 Mad L Jour 201 (204) (DB), *Sooda-mani Patter v. Somasundara Mudaliar.*
3. ('81) 3 Mad 342 (346, 347) (FB), *Collector of Tanjore v. Ramasamier.*

('18) 5 AIR 1918 Law Bur 33 (34): 44 and Cas 109, *Maung Htat v. Maung San Dun.* Also see Note 3.

## S. 26 NOTE 5

1. ('81) 3 Mad 342 (346, 347) (FB), *Collector of Tanjore v. Ramasamier.* (Case relating to lease under which lessee was to pay the value of a certain quantity of paddy each year, the value to be fixed later on—In this case, however, the actual amount payable in the first year was covered by the duty paid.)

2. ('94) 4 Mad L Jour 201 (204) (DB), *Sooda-mani Patter v. Somasundara Mudaliar.*



"On comparing S. 26 and Art. 39 of the present Act with S. 11 and Art. 19 (c) of Act XVIII of 1869 we observe that the subject-matter of a lease exceeding 3 years was described in the last mentioned enactment as the total amount of rent payable under such lease during the first year of the term; which as pointed out by a Divisional Bench of this Court in *Collector of Tanjore v. Ramasami Aiyar*,<sup>3</sup> was an uncertain quantity incapable of being ascertained beforehand when the rent is payable in paddy and its money value is the market-value when the first year's rent accrues due. In the present Act, however, the value of the subject-matter is that of the average rent reserved, which may be estimated beforehand without much difficulty. It is not unreasonable to presume from the alteration in the description of the subject-matter of a lease that the probable intention was to designate as the subject-matter the average value of the rent during the period of the lease instead of the value of the rent in any particular year and thereby to enable parties to such lease to secure its exemption from the operation of S. 26."

But it is submitted with respect that the "average annual rent" payable under a lease may be as much a matter of which the value cannot be ascertained beforehand as the rent of the first year. Hence, it does not seem to be correct to say categorically that this section does not apply to leases for a period of three or more years.<sup>4</sup> The actual decision in the case, however, is capable of being sustained on the ground that in the circumstances of the case, the average value of the annual rent was ascertainable as the instrument itself stated such value which was held to be a fair value. See also note 4.

In the case of *mining* leases under which royalty or a share of the produce is fixed as the rent, the proviso to the section enacts that a duty paid on the valuation as therein specified will be sufficient in all cases.

This section does not apply to a lease by a cultivator for purposes of cultivation as such a lease is exempted from stamp duty and this section only applies to instruments which are chargeable with an *ad valorem* duty.<sup>5</sup>

**6. Mortgage to secure balance of a running account.**—Where a mortgage is executed to secure the balance of a running account and expresses the maximum amount secured, the instrument is not one covered by this section. The reason is that in such a case the amount or value of the subject-matter is the maximum amount secured and therefore one which can be ascertained at the date of the execution.<sup>1</sup>

Where, however, no maximum is fixed, it is conceived that the instrument will fall under this section as the amount or value of the subject-matter cannot be ascertained at the date of execution.

**7. Stipulation for penalty.**—In computing the amount or value of the subject-matter of an instrument for purposes of stamp-duty the amount stipulated

3. ('78) 3 Mad 342.

4. See ('97) 7 Mad L Jour 467 (Journal).

5. ('18) 5 AIR 1918 Mad 1066 (1067, 1068): 39 Ind Cas 448 (DB), *Seshayya v. Venkata Subbayya*.

#### S. 26 NOTE 6

1. ('19) 6 AIR 1919 Low Bur 37 (37): 9 Low Bur Rul 217: 50 Ind Cas 303 (DB), *Chetty Firm v. Maung Aung Ba*.  
[See however ('04) 31 Cal 807 (809): 8 Cal WN 667 (DB), *Harendralal Roy v. Tarini Chandra*. (In this case it was assumed

that this section would apply to a mortgage to secure future advances, where a maximum was fixed.)]

#### S. 26 NOTE 7

1. ('87) 9 All 585 (588, 589): 1887 All WN 190 (FB), *In re Gajraj Singh*. (Oldfield, J., contra.)

[But see ('80) 2 All 654 (663): 5 Ind Jur 264 (FB), *Reference under Stamp Act, 1879*. (Stuart, C. J., contra—The correctness of this decision was doubted in 9 All 585 (FB).] Also see S. 2 (5) Note 18, S. 3 Note 12 and S. 27 Note 6.



to be paid by way of penalty in case of breach of covenant is not to be taken into account.<sup>1</sup> Hence, the mere inclusion of a penalty clause will not make this section applicable to an instrument not otherwise within its purview.

8. **Assignment of debt.**—C executes a bond for Rs. 800 in favour of A. A assigns the debt to B by way of gift and in the assignment deed the estimated value is stated as Rs. 400. Can C in a suit by B on the bond contend that B cannot recover anything in excess of Rs. 400 by reason of S. 26? It has been held that C cannot contend so and that S. 26 does not apply to such a case as the value of the subject-matter of the instrument cannot be said to be incapable of ascertainment in such a case.<sup>1</sup> The true reason, it is submitted why S. 26 will not apply to such a case, seems to be that in such a case B sues not on the assignment deed but on the bond itself and as the bond is properly stamped B is entitled to recover the whole amount of the debt due under it.

9. Instruments carrying interest.—See Notes on Section 23.

10. Deed not specifying value of property.—See Notes on Section 27.

11. **Document insufficiently stamped under mistake.**—Where at the time of stamping an instrument the parties are under a mistake that it is chargeable with a fixed duty and stamp it accordingly and on the document being tendered in evidence the Court holds that the instrument is chargeable with *ad valorem* duty and therefore insufficiently stamped, this section does not apply to such a case.<sup>1</sup> The reason is that such a case is not the same as one of *unascertainability* of the value of the subject-matter of an instrument. But the document can be received in evidence on payment of the deficit duty and penalty under S. 35.

12. **Amount or value of the subject-matter capable of ascertainment—Effect.**—Where the amount or value of the subject-matter can be ascertained at the date of the execution and the instrument is insufficiently stamped, it is not open to the Court to admit the instrument and limit the extent of its operation in proportion to the stamp used. In such a case the proper course for the Court is either to refuse to admit the instrument in evidence or to receive it on payment of penalty and deficit duty under S. 35.<sup>1</sup>

13. **“Nothing shall be claimable.”**—Under this section nothing in excess of the amount or value covered by the stamp can be recovered under the instrument, and no decree for the excess can be passed in favour of the plaintiff even though the defendant admits the claim laid.<sup>1</sup> But, in such a case it would be open to the plaintiff to claim the excess amount on payment of the deficit duty and penalty under S. 35. See Note 16.

#### Section 26—NOTE 8

1. ('39) 26 AIR 1939 Pat 49 (54): 18 Pat 141: 179 Ind Cas 549 (DB), *Muhammad Yunus v. Champamani Bibi*. (S. 26 does not apply to the case of an assignment by way of gift in which an estimated value is given of the interest assigned—The parties to an assignment of a debt are under no compulsion to value it at the entire amount due—There is nothing in the Act to limit the right of the parties to value a chose in action at any amount they may think fit or to penalise them for doing so—The fact that a certain value is given in the assignment deed does not preclude the assignee from recovering or claiming more than that amount from the debtor.)

#### Section 26—NOTE 11

1. ('97) 1897 Bom P J 382 (FB), *Adarji v.*

#### Rajaram.

#### Section 26—NOTE 12

1. ('72) 14 Moo Ind App 24 (38, 39): 15 Suth W R 32 (PC), *Mantappa v. Baswantrao*.

Also see S. 35 Note 7.

#### Section 26—NOTE 13

1. ('69) 4 Mad H C R 120 (134) (DB), *Kistnasamy Pillay v. Municipal Commissioners*. (Written contract liable to optional stamp was stamped to cover amount of Rs. 5000—Plaintiff claiming in excess of Rs. 5000—Defendant admitting that the amount was due under the contract but claiming a set off under the terms of the contract—Plaintiff cannot get a decree for excess on ground of admission by defendant.)
- ('18) 5 AIR 1918 Low Bur 33 (34): 44 Ind Cas 109, *Maung Htat v. Maung San Dun*.



14. "Claimable," meaning of.—"Claimable" means claimable in a Court of Justice. Thus, where the claim in the *suit* does not exceed the amount covered by the stamp duty paid, the mere fact that such claim together with the amount recovered by the plaintiff privately exceeds the amount covered by the stamp will not bar the claim in the suit.<sup>1</sup>

14a. Certificate of Collector—Second Proviso.—In the undermentioned case<sup>1</sup> a mortgage deed executed for Rs. 10000 provided for further advances on the same security but the limit of further advances was not specified in the mortgage. The mortgagee applied to Collector under S. 31 for adjudication as to proper stamp duty payable on the instrument as a whole when he had made further advances to the extent of Rs. 7000 from time to time. The Collector adjudged the duty after following the procedure under Ss. 33 and 40 and ultimately a certificate that the proper duty and penalty has been paid was endorsed on the mortgage under S. 42 of the Act. It was held that the certificate of the collector that the instrument was duly stamped had the effect of excluding the operation of S. 26 and therefore the mortgagee was entitled to enforce the payment of the entire amount due and not merely the sum originally advanced.

15. Admissibility of document not affected.—This section does not refer to the admissibility of a document. It only deals with the quantum of interest allowable in a suit where the document is sued on and accepted as evidence. It is, therefore, not permissible for a Court to refuse to admit a document in evidence under this section.<sup>1</sup>

16. This section and S. 35.—This section is subject to the provisions of S. 35. The effect of the section is to make the instrument "duly stamped" to the extent of the amount covered by the stamp duty paid and not "duly stamped" in respect of any amount that may be claimed in excess. Thus, in *Brij Mohan Singh v. Lachmi Narain Agarwala*<sup>1</sup> a mining lease was granted for 999 years in consideration of Rs. 1920 *salami* subject to certain conditions as to payment of royalty and commission. The document was stamped with a stamp of Rs. 40 ; Rs. 20 for *salami* and Rs. 20 for the estimated amount of the average yearly commission, which on a stamp of Rs. 20 would be Rs. 2,000 (See Art. 35). The plaintiff claimed Rs. 39,000 as royalty and commission on the coal raised by the defendants during a period of six years. In other words, the plaintiff claimed an average annual rent of more than Rs. 6,000 whereas the duty actually paid by him was only sufficient to cover an annual average of Rs. 2,000. The question was whether this section precluded the plaintiff from claiming anything in excess of Rs. 2,000 per annum. The plaintiff contended that he was entitled to recover the excess on payment of the deficit duty and penalty under S. 35. The defendant on the other hand contended that this was not a case of an instrument "not duly stamped," that the instrument was perfectly valid for all purposes subject to the limitation contained in S. 26, and that S. 35 applied only to those instruments which are either unstamped or not duly stamped and has no application to cases where the stamp was an optional stamp. Repelling the contention that S. 35 was inapplicable to instruments covered by S. 26, Dawson-Miller C. J. observed as follows :

"The object of the Stamp Act is not to alter the terms of the bargain bet-

Section 26—NOTE 14

1. ('04) 31 Cal 807 (809, 810) : 8 Cal W N 667 (DB), *Harendralal Roy v. Tarini Chandra*. (A plaintiff obligee can sue on a mortgage bond executed to secure future advances, even when more than the sum covered by the stamp has been realised by him privately.)
- ('46) 33 AIR 1946 Mad 437 (441) : 227 Ind Cas 360 : ILR (1947) Mad 141, *Sethuraman*

v. *Ramanathan*.

Section 26—NOTE 15

1. ('17) 4 AIR 1917 Mad 799 (801) : 35 I. C. 864 (DB), *Muthiah Chetty v. Kothandaramaswami Naidu*.

Section 26—NOTE 16

1. ('20) 7 AIR 1920 Pat 50 (55, 56) : 5 Pa L Jour 660 : 58 Ind Cas 99 (DB).



ween the parties but to protect the revenue by excluding proof of the bargain by an instrument unduly stamped. By denying the benefit of S. 35 in the case of mining leases requiring an *ad valorem* stamp when the value can only be estimated the revenue would gain nothing. In fact it would suffer loss. The only person benefited would be the lessee who would escape a part of the obligation which by his contract he undertook to bear. Section 35 provides the means by which in the case of the estimate proving deficient, the revenue can be amply protected and the terms of the bargain can be proved and given effect to. I can find nothing in the words of S. 35 which necessarily excludes its operation from cases governed by S. 26. It would be a strange result, which the Legislature could hardly have intended, if an instrument bearing no stamp and therefore not admissible in evidence under S. 35, could be validated by payment of a penalty under the proviso of that section whereas a similar instrument bearing a stamp and therefore admissible and enforceable to a limited extent could in no case be fully enforced even by paying the penalty, or admitted in evidence for the purpose of proving the full extent of the contract entered into between the parties."

Mullick, J., gave his reasons as follows :

"Unlike the Evidence Act, the Stamp Act does not base its rules on theories of relevancy or of public policy. It is purely fiscal and insists that certain documents shall pay a contribution to the State according to the purpose for which they were executed. In regard to certain documents which create a right to money it prescribes that unless the stamp is proportionate to the valuation of the claim, the document shall be inadmissible in evidence, and where the intention of the parties is that the valuation shall be unlimited, it enacts by S. 26 that the claimant will be entitled to realise a sum proportionate to the stamp fee paid, subject to certain exceptions in the case of royalties on coal. It follows that, wherever the claim exceeds the amount proportionate to the stamp, the document is not duly stamped for the purpose for which it was executed."

The defendant appealed to the Privy Council from this decision and dismissing the appeal their Lordships of the Privy Council observed thus :

"It is clear to their Lordships that the proviso (a) of S. 35 of the Indian Stamp Act, 1899, is of equal ambit with the body of the section, and that just as an instrument cannot be acted upon, that is to say, nothing can be recovered under it, unless it has a proper stamp, so the proviso provides that if there is not a proper stamp, it may be put on afterwards on payment of a penalty and the instrument then becomes effective."<sup>2</sup>

In respect of instruments coming under this section, therefore, as long as the estimate, on which the stamp duty is paid does not prove incorrect, the instrument is one duly stamped. But once the estimate is exceeded the instrument becomes one not duly stamped to the extent to which the estimate is exceeded and therefore one to which S. 35 applies. In such a case it is open to the party to claim the full amount due on payment of penalty and deficit stamp duty under S. 35.<sup>3</sup> The con-

2. ('24) 11 AIR 1924 PC 221 (221) : 51 Ind App 332 : 4 Pat 34 : 82 Ind Cas 789 (PC), *Lachmi Narayan v. Rameshwar Prasad*.  
3. ('20) 7 AIR 1920 Pat 50 (55, 56) : 5 Pat L Jour 660 : 58 Ind Cas 99 (DB), *Braj Mohan Singh v. Lachmi Narain*.  
(30) 17 AIR 1930 Cal 526 (530) : 126 Ind Cas 712 (DB), *Barboni Coal Concern Ltd. v. Parichark*.

('18) 5 AIR 1918 Mad 1066 (1067, 1068) : 39 Ind Cas 448 (DB), *Seshayya v. Venkata Subbayya*. (Unstamped instrument.)  
(24) 11 AIR 1924 Nag 408 (409) : 78 Ind Cas 956, *Nilkanth v. Keshworao*.  
(97) 1897 Bom P J 382 (FB), *Adarji v. Rajaram*. (1882 Bom P J 189 followed.)  
(86) 10 Bom 239 (240) (FB), *Mulji Bechar v. Jetha Jeshanker*. (Held that the document



trary view held in the undermentioned cases<sup>4</sup> is no longer good law.

**17. Objection on appeal.**—An objection that the plaintiff is not entitled to recover more than the amount covered by the stamp under this section cannot be taken for the first time in appeal.<sup>1</sup> (See S. 36).

**\*27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.**

Facts affecting duty to be set forth in instrument.

### Provincial Amendment.

#### UNITED PROVINCES

Section 27 of the main Act shall be made sub-s. (1) of the same section and the following shall be added as sub-s. (2), namely—

“(2) In the case of instruments relating to immovable property chargeable with an *ad valorem* duty on the value of the property, and not on the value set forth, the instrument shall fully and truly set forth the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property, the local rates, Municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act.” —U. P. Act XVIII of 1938, S. 3. [13-2-1939]

NOTE.—For rules, see Appendix F.

#### RELEVANT REFERENCES TO OTHER ACTS.

#### BENGAL

Attention is invited to sub-s. (2) of S. 82 of the Calcutta Improvement Act, 1911, (Bengal Act V of 1911). The text of S. 82 of the said Act is given in Appendix J.

#### CENTRAL PROVINCES

Attention is invited to sub-s. (2) of S. 77 of the Nagpur Improvement Trust Act, 1936 (C. P. Act XXXVI of 1936) and to sub-s. (2) of S. 2 of the City of Jubbulpore (Improvement Duty) Act, 1948 (C.P. & Berar Act LVIII of 1948). The text of the sections of the said Acts is given in Appendix J.

#### MADRAS

Attention is invited to S. 136 of the Madras City Municipal Act, 1919 (Mad Act IV of 1919), to Ss. 116A to 116C of the Madras District Municipalities Act, 1920 (Mad. Act. V of 1920) and to Ss. 110A to 110C of the Madras Local Boards Act, 1920 (Mad. Act XIV of 1920). The text of these sections is given in Appendix J.

#### UNITED PROVINCES.

Attention is invited to sub-s. (3) of S. 67-H of the United Provinces Town Improvement Act, 1919 (U. P. Act VIII of 1919). The text of S. 67-H of the said Act is given in Appendix J.

#### Synopsis

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Facts affecting duty.</li> <li>2. Mode of determining facts affecting stamp duty.</li> <li>3. Admission of collateral evidence. See Note 2.</li> </ol> | <ol style="list-style-type: none"> <li>4. Omission to state or mis-statement of consideration.</li> <li>5. Consideration in kind.</li> <li>6. Stipulation for penalty.</li> </ol> |
|--|---|

\*[1879—S. 27; 1869—S. 34 (a); 1862—S. 51 (1); 1860—S. 35. Cf. (1870) 33 & 34 Vict., C. 97—S. 10; (1891) 54 & 55 Vict., C. 39—S.5.]

was validly stamped under clause 2, section 12 of Regulation XVIII of 1827—But the plaintiff cannot obtain on it a judgment for a sum or value beyond what is covered by the stamp—If he wishes to pay an additional stamp duty and penalty to be able to obtain a judgment for a larger sum or value there is nothing to prevent the Court from allowing him to do so.)

4. ('72) 17 Suth W R 131 (134) (DB), *Syud Keramut Ali v. Moonshie Abdool Wahab.*

('97) 1897 Bom P J 382 (FB), *Adarji v. Rajaram* (Per Candy, J.)

('19) 6 AIR 1919 Low Bur 37 (37): 9 Low Bur Rul 217: 50 I.C. 303 (DB), *Chetty Firm v. Maung Aung Ba.* (The judgment seems to suggest that if S. 26 applies, S. 35 will not apply—No longer good law.)

#### Section 26—NOTE 17

1. ('30) 17 AIR 1930 Cal 526 (530): 126 Ind Cas 712 (DB), *Barboni Coal Concern Ltd. v. Paricharak.*



1. **Facts affecting duty.**—The section requires that the consideration and all other facts and circumstances which affect the stamp duty payable must be stated in the instrument. Thus, in the case of a sale of property subject to a mortgage or charge, the amount of the unpaid mortgage-money or money due under the charge is deemed to be part of the consideration for the sale under S. 24 and hence, in such a case the fact of the mortgage or charge is a fact affecting the duty and must be stated in the instrument.<sup>1</sup> Similarly, where property is transferred in consideration, wholly or in part of any debt due to the transferor from the transferee, the instrument must state the fact, as under S. 24 the amount on which the duty has to be calculated in such a case must include the debt, the extinction of which forms the consideration or part thereof.<sup>1a</sup>

Where the duty payable is on the value of the property as set forth in the instrument, the value of the property is a fact affecting the duty and must be stated in the instrument.<sup>2</sup> Unless otherwise provided for, the value of the property to be set forth must be the market-value of the property. The rules contained in the Court-fees Act relating to the valuation of property for purposes of court-fees cannot be resorted to, to ascertain the value of property for purposes of stamp duty.<sup>3</sup>

Where, however, the duty is not payable on the value of the property, but on the amount of consideration only and such consideration is truly set forth in the instrument, there is no contravention of the provisions of this section merely because the property is *undervalued*.<sup>4</sup>

2. **Mode of determining facts affecting stamp duty.**—It is well settled that the stamp duty payable on an instrument must be determined by referring to the terms of the document and that the Court is not entitled to take into consideration evidence *de hors* the instrument itself.<sup>1</sup> Thus, in determining the question whether a cheque,<sup>1a</sup> hundi payable on demand or pronote is duly stamped or not, the Court is not entitled to take into account the collateral circumstances disclosed in evidence such as that the cheque or hundi was post-dated,<sup>2</sup> or that there was a collateral agreement not to present the pronote for payment for some time<sup>3</sup> or that the hundi was given merely as a substitute for a bond to escape higher stamp duty.<sup>4</sup>

Where, however, the duty payable is on the amount of consideration, the Court is entitled to find out the true consideration from the examination of the terms of the

#### Section 27—NOTE 1

1. ('31) 18 AIR 1931 Cal 193 (201): 58 Cal 33:127 I.C. 775 (FB), *Janardahn Rao v. Secy. of State*.

('37) 24 AIR 1937 Nag 57 (58): ILR (1937) Nag 432:166 Ind Cas 681, *In re Trimbak Madhao*.

1a. ('10) 32 All 171 (174): 5 Ind Cas 697 (DB), *Emperor v. Rameshwar Das*.

2. ('22) 9 AIR 1922 All 82 (83): 44 All 339: 65 I. C. 811 (FB), *In the matter of Muhammad Muzaffar*.

3. ('80) 2 All 664 (667, 668) (FB), *Reference by Board of Revenue N. W. P. under Act I of 1879*.

4. ('96) 20 Mad 27 (29) (FB), *Reference under Stamp Act, S. 46*.

#### NOTE 2

1. ('35) 22 AIR 1935 Rang 243 (244, 245): 13 Rang 613:157 Ind Cas 538 (SB), *In re C. R. M. M. L. A. Chettyar Firm*.

('03) 27 Bom 279 (280): 5 Bom L R 28 (FB), *Sakharam Shankar v. Ramchandra Babu*.

('70) 5 Beng L R 103 (105): 14 Suth W R 38

(DB), *Chunder Kant Mookerjee v. Kartick Chunder Chaile*.

('25) 12 AIR 1925 Bom 527 (528): 90 Ind Cas 685 (DB), *Ramprasad Shivalal v. Shrinivas Balmukund*.

('22) 9 AIR 1922 All 82 (83): 44 All 339: 65 I.C. 811 (FB), *In the matter of Muhammad Muzaffar*.

('89) 16 Cal 432 (435) (DB), *Ramen Chetty v. Mahomed Ghose*. (Evidence that cheque was post-dated.)

Also see S. 3 Note 12 and S. 35 Note 3.

1a. NOTE.—After the Amending Act of 1927 cheque is exempt from Stamp duty.

2. ('25) 12 AIR 1925 Bom 527 (528): 90 I.C. 685 (DB), *Ramprasad Shivalal v. Shrinivas Balmukund*. (Hundi.)

('89) 16 Cal 432 (435) (DB), *Ramen Chetty v. Mahomed Ghose*.

3. ('70) 5 Beng L R 103 (105): 14 Suth W R 38 (DB), *Chunder Kant v. Kartick Chunder*.

4. ('03) 27 Bom 279 (280): 5 Bom L R 28 (FB), *Sakharam Shankar v. Ramchandra Babu*.



instrument as a whole and is not bound to restrict itself to the consideration which the parties have elected to state in the instrument.<sup>5</sup> Thus, where a deed of conveyance was executed for a consideration of Rs. 300 made up for Rs. 250 principal of two loans advanced to the transferor and Rs. 50 interest on these loans after waiving Rs. 145 out of interest due, it was held that the consideration for the conveyance was the cancellation of the entire debt of Rs. 445, that is, Rs. 250 principal plus Rs. 195 interest, and duty must be paid on that amount.<sup>6</sup>

In the case of an instrument of gift (Art. 33) or an instrument of settlement (Art. 58) the duty payable is on value of property *as set forth* in the instrument. For other cases of a similar nature, see Articles 12, 23, 31, 54, 55 and 64. In such cases the failure to state the value at all or an undervaluation of the value of the property which is the subject-matter of the instrument would be a contravention of this section.<sup>6a</sup> If the value is stated in the instrument and duty paid thereon, the instrument must be regarded as duly stamped and cannot be impounded on the ground that the market-value of the property is higher than that stated in the deed.<sup>7</sup>

Where an instrument of gift does not state the value of the property gifted, the Allahabad High Court<sup>8</sup> and the Nagpur Judicial Commissioner's Court<sup>9</sup> have held that the instrument is not chargeable to any duty at all. The Allahabad High Court has further held that in such a case the Collector has no power to ascertain the value of the property with a view to causing the instrument to be stamped with reference to the value thus ascertained and that if the failure to state the value was intentional, the remedy is a prosecution under S. 64.<sup>10</sup> The Lahore High Court has expressed a similar view with reference to a mortgage-deed which does not mention the sum secured by the mortgage.<sup>11</sup>

The Board of Revenue, Madras, has, however, held that where a deed of gift does not set forth the value of the property, the attention of the executant, if alive, should be drawn to Ss. 27, 62 and 64 of the Stamp Act and he should be required to set forth the value of the property gifted and if he fails to do so should be proceeded against under S. 64. If the executant is not alive, the value should be ascertained from the grantee and the deed stamped accordingly. If the grantee refuses to stamp the deed, he cannot be compelled to do so, but the document should be impounded and the grantee warned that the deed may be held of no avail if not properly stamped.<sup>12</sup> It is submitted that this decision so far as it relates to the impounding of the document is not correct.

3. Admission of collateral evidence.—See Note 2.

4. Omission to state or mis-statement of consideration.—A contravention of this section with intent to defraud the Government is punishable under S. 64. But apart from the punishment prescribed, a failure to state the consideration truly

5. ('35) 22 AIR 1935 Rang 243 (244) : 13 Rang 613 : 157 Ind Cas 538 (SB), *In re C.R.M. M. L. A. Chettyar Firm*.

Also see Art. 23 Note 4.

6. ('35) 22 AIR 1935 Rang 243 (244) : 13 Rang 613 : 157 Ind Cas 538 (SB), *In re C.R.M. M.L.A. Chettyar Firm*.

6a. ('22) 9 AIR 1922 All 82 (83) : 44 All 339 : 65 I.C. 811 (FB), *In the matter of Muhammad Muzaffar*.

7. ('85) 8 Mad 453 (455) (FB), *Reference under Stamp Act, S. 46*.

8. ('22) 9 AIR 1922 All 82 (83) : 44 All 339 : 65 I.C. 811 (FB), *In the matter of Muhammad*

*Muzaffar*.

9. ('29) 16 AIR 1929 Nag 272 (272) : 119 Ind Cas 680, *Ajodhya Prasad v. Parashram*.

10. ('22) 9 AIR 1922 All 82 (83) : 44 All 339 : 65 I.C. 811 (FB), *In the matter of Muhammad Muzaffar*.

Also see S. 40 Note 2 ; S. 64 Note 5 : Art. 23 Note 5 and Art. 33 Note 5.

11. ('45) 32 AIR 1945 Lah 69 (75) ILR (1946) Lah 185 (SB), *Miran Bakhsh v. Emperor*. (Case of mortgage-deed.)

12. ('33) Mad S M p. 33. (Citing, B P 500, 25th August 1887.)



and fully does not render the instrument invalid.<sup>1</sup> If the consideration stated in the deed is one which had actually passed and which represents the final bargain between the parties, the fact that originally the parties had agreed on a higher consideration and had subsequently reduced it to the amount stated in the deed with a view to lessen the stamp duty, is of no consequence.<sup>2</sup>

5. Consideration in kind.—Where a bond stipulates for delivery of a certain quantity of grain at a future date at a price fixed by the parties, and stamp duty is paid on the value so fixed, the bond cannot be considered to be not duly stamped, although subsequently, there may be a rise in the market-value of the grain.<sup>1</sup> See also Notes on S. 26.

6. Stipulation for penalty.—In estimating the stamp duty payable on an instrument provisions in the instrument which are essentially of a penal character are not to be taken into account.<sup>1</sup>

**\*28. (1)** Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original con-

#### Section 27—NOTE 4

1. See (1893) 2 Ch 555 (560): 62 L J Ch 795: 69 L T 421: 41 W R (Eng) 545, *Powell v. Porvincial Bank, London*. ("No case that I know of can be cited to show that a misstated consideration or an erroneous stamp would invalidate the deed"—Per Lindley L. J.)
2. (1812) 170 E R 1347 (1348): 3 Camp 180 (181), *Shepherd v. Hall*.

#### Section 27—NOTE 5

1. ('86) 13 Cal 268 (269) (DB), *Bhairab Chundra v. Alek Jan*.  
Also see Art. 15 Note 5.

#### Section 27—NOTE 6

1. ('87) 9 All 585 (590): 1887 All W N 190 (FB), *In re Gajraj Singh*.  
Also see S. 2 (5) Note 18, S. 3 Note 12 and S. 26 Note 7.



sideration ; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers :

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

### Provincial Amendments.

#### BENGAL

In the proviso to sub-section (4) of S. 28 for the words "one rupee" substitute the words "two rupees."—*Beng. Act XII of 1935, S. 6.* [1-6-1935.]

#### BOMBAY

For the proviso to sub-section (4) of S. 28 the following shall be substituted, namely—

"Provided that notwithstanding anything contained in Art. 23 of Sch. I the duty on such last mentioned conveyance shall in no case be less than two rupees."

—*Bom. Act II of 1932, Pt. IV, S. 15 (4).* [1-4-1932.]

#### SIND

Same as that of Bombay.—*Sind Act I of 1938, S. 2.* [31-3-1938.]

1. **Apportionment of consideration**—Sub-section (1).—Where property contracted to be sold for one consideration is conveyed to the purchaser in separate parcels by different instruments, the consideration is apportionable in any manner as the parties think fit ; but a distinct consideration for each separate portion must be mentioned in each instrument and duty must be paid in respect of each conveyance accordingly.

2. **Sub-section (3).**—B contracts to purchase a certain property from A and then contracts to sell the same property to C. B may, instead of taking a conveyance from A and then transferring the property to C, direct A to execute a conveyance directly in favour of C. A is bound to execute the conveyance in favour of the nominee. This will avoid the payment of double stamp duty.<sup>1</sup> Sub-section (3) provides that stamp-duty payable on such conveyance is *ad valorem* on the consideration moving from the sub-purchaser.

\*[1879—S. 28. Cf. (1870) 33 & 34 Viet, C. 97—S. 74; (1891) 54 & 55 Viet., C. 39—S. 58.]

Section 28—NOTE 2  
1. ('35) 22 AIR 1935 Bom 340 (342) : 59

Bom 582 : 157 Ind Cas 1062 (DB), *Rahim-tulla Lowji v. Official Assignee, Bombay.*



3. Sub-section (4).—A contracts to purchase from B certain property for Rs. 1,000. A not having obtained a conveyance contracts to sell one half of the same property to C for Rs. 950 and keeps the remaining half with him. B, in consequence, executes a conveyance in favour of the sub-purchaser C. The conveyance in favour of C must be stamped with *ad valorem* duty on Rs. 950. If A takes a conveyance in respect of the other half of the property, the stamp duty payable on this conveyance will be *ad valorem* on the difference between the two considerations, i.e., Rs. 50, subject to a minimum duty of one rupee. Under the English Stamp Act of 1891, it has been held in *Maples v. Inland Revenue Commissioners*<sup>1</sup> that the stamp duty payable on the conveyance to A will be *ad valorem* on the proportionate amount of the original consideration, i.e., Rs. 500. It may be noted here that S. 58 (5) of the English Stamp Act of 1891 which corresponds to this sub-section does not provide for the case where a part of the property is conveyed to the original purchaser.

#### E.—Duty by whom payable.

Duties by whom payable.

\*29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,—

(a) in the case of any instrument described in any of the following articles of Schedule I, namely :—

No. 2 (Administration Bond),

<sup>a</sup>[No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),]

No. 13 (Bill of exchange),

No. 15 (Bond),

No. 16 (Bottomry Bond),

No. 26 (Customs Bond),

No. 27 (Debenture),

No. 32 (Further charge),

No. 34 (Indemnity-bond),

No. 40 (Mortgage-deed),

No. 49 (Promissory-note),

No. 55 (Release),

No. 56 (Respondentia Bond),

No. 57 (Security-bond or Mortgage-deed),

No. 58 (Settlement),

No. 62 (a) (Transfer of shares in an incorporated company or other body corporate),

No. 62 (b) (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8),

No. 62 (c) (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance),—

\*[1879—S. 29 ; 1869—S. 6.]



by the person drawing, making or executing such instrument :

<sup>b</sup>[(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance :

(bb) in the case of a policy of fire-insurance—by the person issuing the policy :]

(c) in the case of a conveyance (including a re-conveyance of mortgaged property)—by the grantee : in the case of a lease or agreement to lease—by the lessee or intended lessee :

(d) in the case of a counterpart of a lease—by the lessor :

(e) in the case of an instrument of exchange—by the parties in equal shares :

(f) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates : and

(g) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

a. These words and figure were *substituted* for the words and figure “No. 6 (Agreement to mortgage)” by S. 5 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904.)

b. Clauses (b) and (bb) were *substituted* for the original clause (b) by S. 4 of the Indian Stamp (Amendment) Act, 1906 (V of 1906). The original clause (b) was as follows:—  
“(b) in the case of a policy of insurance—by the person effecting the insurance.”

#### Provincial Amendments.

#### BIHAR

Section 9 of the Bihar Stamp (Amendment) Act, VI of 1937, [1-1-1938] is as follows :

“9. In applying section 23A, 24 or 29 to any instrument chargeable with a higher rate of duty under the Bihar Stamp (Amendment) Act, 1937, the references in those sections to the several articles in Sch. I shall be deemed to be references to the corresponding articles in Schedule IA.”

*Application of Ss. 23A, 24 and 29 to instrument chargeable with duty under Schedule IA.*

#### CENTRAL PROVINCES

Section 8 of the Central Provinces and Berar Indian Stamp (Amendment) Act, VI of 1939 [1-7-1939], is similar to S. 9 of the Bihar Act given above, except, for the words and figures “under the Bihar Stamp (Amendment) Act, 1937” *substitute* the words and figures “under this Act, as amended by the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939.”

#### MADRAS

In clause (a) of S. 29 after the word and figure “Sch. I” *insert* the words, figure and letter “or the corresponding articles of Sch. IA as the case may be.”

—*Madras Act VI of 1922, S. 10.* [25-4-1922.]

#### ORISSA

Section 9 of the Orissa Stamp (Amendment) Act, VI of 1943 [26-4-1943], is similar to S. 9 of the Bihar Act given above, except, for the short title of the Bihar Act *substitute* the short title “the Orissa Stamp (Amendment) Act, 1943.”



## PUNJAB

In clause (a) of S. 29 for the word and figure "Sch. I" substitute the word, figure and letter "Schedule IA."—*Punjab Act VIII of 1922, S. 13.* [15-1-1923.]

## Synopsis

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Legislative changes.</li> <li>2. Incidence of stamp duty.</li> <li>3. "In the absence of an agreement to the contrary."</li> <li>4. Agreement not to stamp.</li> <li>5. Agreements chargeable under Art. 5. See Note 2.</li> <li>6. Bond.</li> <li>7. Mortgage-deed.</li> </ol> | <ol style="list-style-type: none"> <li>8. Promissory note.</li> <li>8a. Transfer of shares.</li> <li>9. Clause (c).</li> <li>10. Exchange—Clause (e).</li> <li>11. Certificate of sale—Clause (f).</li> <li>12. Instrument of partition—Clause (g).</li> <li>13. Award. See Note 12.</li> <li>14. Agreement to pay penalty. See Note 4.</li> <li>15. Recovery of expenses as to stamp.</li> </ol> |
|---|---|

1. **Legislative changes.**—The corresponding provisions of the previous Acts are S. 6 of Act XVIII of 1869 and S. 29 of Act I of 1879.

The words and figure "No. 6 (Agreement relating to Deposit of Title deeds, Pawn or Pledge)" in cl. (a) have been substituted for the words and figure "No. 6 (agreement to mortgage)" by S. 5 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

Clauses (b) and (bb) were substituted by Section 4 of the Indian stamp (Amendment) Act, 1906 (V of 1906) for the original clause (b).

2. **Incidence of stamp duty.**—This section provides for the incidence of stamp duty in respect of *certain* kinds of instruments. But the section is expressly made subject to an agreement to the contrary and thus leaves it open to the parties to an instrument to agree between themselves as to who shall bear the expense of providing the proper stamp.

In the case of *receipts* S. 30 expressly imposes an obligation on the person receiving any money, bill of exchange etc., to give a duly stamped receipt.

The section is not exhaustive and does not include all the instruments mentioned in the schedule. For example, the section does not provide as to which party is to pay the stamp duty in the case of an *agreement* chargeable under Art. 5. It has been observed in the undermentioned case,<sup>1</sup> that in cases of documents not provided for in this section the duty will have to be borne by the person who desires to get the instrument stamped.

It has been ruled by the Madras Board of Revenue that the duty on the duplicate or counterpart of a deed of conveyance or mortgage should be borne by the grantor and the mortgagee respectively.<sup>2</sup> It has similarly been ruled that in the case of a surrender of a lease the lessor ought to pay the duty.<sup>3</sup>

It may be noted that the provisions of S. 62 (b) which make the executant of a document liable to punishment if the instrument is not duly stamped imply that *ordinarily* the expense of the stamp duty on a document is to be borne by the executant. But it is conceived that if in respect of a particular document the liability (as to stamp) as between the parties is not provided for under this section or S. 30, the person who has paid for the stamp will have no right of recovery as against the other party.

This section needs special notice in connection with the first proviso to S. 3, which exempts from stamp-duty "any instrument executed by, or on behalf of,

## Section 29—NOTE 2

1. ('35) 1935 Bom 256 (257) : 59 Bom 469:
2. ('33) Mad S M p. 35. (Citing, B P 715' 26th May 1880.)

('33) Mad S M p. 35. (Citing, B P 2472, 10th October 1882.)

('33) Mad S M p. 35. (Citing, B P 15, 6th January 1880.)



or in favour of Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument." In determining whether an instrument to which Government is a party comes under that exemption, regard must be had to this section. In the case of a sale or lease of waste land by the Government, the stamp duty would be payable by the grantee or lessee, and the exemption would not apply; neither would it in the case of a mortgage-deed executed *in favour* of Government, the stamp duty being payable by the mortgagor. In the case of ferry tolls and such like, it is usual for the Deputy Commissioner to grant a lease or patta, and to take a counterpart or kabuliat from the lessee specifying the conditions of the lease and agreeing to pay certain sums into the Government treasury periodically. As the stamp duty on a lease is payable by the lessee under S. 29 (c), and that on the counterpart by the lessor under S. 29 (d), the general exemption applies to the kabuliat, but not to the patta, the duty on which would have to be paid by the lessee.<sup>4</sup>

3. "In the absence of an agreement to the contrary."—The section is applicable only when there is no agreement to the contrary. Where the parties to a document agree that the expense of providing the proper stamp is to be borne by a certain party contrary to the provisions of this section, the agreement will prevail and that party will be bound to pay for the stamp. A, a company, entered into an agreement with B whereby A agreed to execute a trust-deed to be prepared by B's solicitors at the expense of A. In a suit by B to recover the cost of preparation of the trust-deed it was held that he was entitled to include in the claim the stamp duty paid on the trust-deed as the word "prepared" must have been intended to include the stamping of the document.<sup>1</sup>

4. Agreement not to stamp.—An agreement which is intended to evade the provisions of the stamp laws is void under Section 23 of the Contract Act. Thus, an agreement not to stamp a document which is chargeable with duty and that if it should become necessary to stamp it by paying the penalty, one of the parties to it will recover from the other the expense of stamping it, is not enforceable.<sup>1</sup>

5. Agreement 5 chargeable under Art. 5.—See note 2.

6. Bond.—A person who draws, makes or executes a bond has to pay for the stamp required for the document. A, a debtor, executed an instrument containing distinct matters, i.e., a conveyance and a bond wherein it was recited that A had sold certain property to his creditor, B, in liquidation of part of his debts and that he promised to pay the balance of his debts within a certain time. The document was also signed by B as vendee. It was held that B was not the executant of the bond so as to make him liable to pay the duty on the bond. But so far as the conveyance was concerned, B, who had signed it as a vendee, was the person who was liable to pay the duty on it.<sup>1</sup>

4. See Punjab Stamp Manual, 1934, Part I-B pp. 7-8.

Section 29—NOTE 3

1. ('97) 21 Bom 126 (136), *Dabson and Barlow Ltd. v. Bengal Spinning and Weaving Co.*

Section 29—NOTE 4

1. (1846) 72 R.R. (145): 3 Jo & Lat 603 (616), *Abbott v. Stratton*.

(1867) 2 Ex 338 (339): 36 L.J. Ex 180: 16

L.T. 568: 15 W.R. (Eng) 964, *Nixon v. Albion Marine Insurance Co.*  
[See also ('75) 24 Suth W.R. 88 (90) (DB), *Prosunno Nath v. Tripoora Soonduree*.

('69) 11 Suth W.R. 553 (554) (DB), *Shoshee Bhusan v. Tarachand*.]

Section 29—NOTE 6

1. ('36) 1936 Lah 449 (451) 17 Lah 223:



7. **Mortgage-deed.**—In the case of a mortgage-deed it is the mortgagor (who is the executant of the deed) who has to pay for the stamp required on the instrument. This shows that a consent decree creating a charge on immovable property is not included in the definition of a mortgage-deed as the person consenting to the decree cannot be said to have *executed* it. Such a decree is not, therefore, liable for any stamp duty,<sup>1</sup> as there is no specific provision in the Act making it chargeable.

8. **Promissory note.**—Under this section it is the duty of the debtor who has executed a promissory note to pay for the necessary stamp.<sup>1</sup>

8a. **Transfer of shares.**—Ordinarily vendor has to pay stamp duty.<sup>1</sup>

9. **Clause (c).—Conveyance.**—Clause (c) of the section provides that in the case of a conveyance the stamp duty shall be paid by the grantee i.e., the person in whose favour the conveyance is effected.

Where a landlord to whom certain property is conveyed is authorised by a deed of assignment to collect the back rents of the property as the agent of the outgoing landlord, the person liable to pay the duty is the out-going landlord and not the new landlord.<sup>1</sup>

See also Note 6.

**Lease**—In the case of a lease, the lessee is responsible for providing the expense of the proper stamp.<sup>2</sup>

10. **Exchange—Clause (e).**—The parties to an instrument of exchange are liable to pay the stamp duty in equal shares under cl. (e) of the section. In the case of an exchange of land with Government, the exemption in favour of Government under S. 3, Proviso 1 would not in terms apply as the Government is not liable to pay the *duty chargeable* in respect of such instrument, it being only liable to pay *half* the duty. But such exchanges are exempt from duty under Government notification issued under S. 9 provided the land is acquired by Government for public purposes.<sup>1</sup>

11. **Certificate of sale—Clause (f).**—It is the duty of the purchaser to bear the expense of the proper stamp for a certificate of sale which the Court has to issue to him in respect of the property purchased.<sup>1</sup>

12. **Instrument of partition—Clause (g).**—Under Art. 45, Sch. I, an instrument of partition is chargeable with an *ad valorem* duty according to the value of the

#### Section 29—NOTE 7

1. ('35) 1935 Bom 256 (257): 59 Bom 469: Also see S. 2 (17) Note 24 and Art. 40 Note 2a

#### Section 29—NOTE 8

1. ('27) 14 AIR 1927 Nag 241 (242): 104 Ind Cas 470 (472), *Udaram v. Laxman*. ('75) 24 Suth W R cr 1 (2) (DB), *The Queen v. Nadichand Poddar*.

#### Section 29—Note 8a

1. A.I.R. 1949 F. C. 211. (215): 1949 F.C.R. 379, *Jainarain V. Srarajmull*.

#### Section 29—NOTE 9

1. ('29) 16 AIR 1929 Pat 395 (397): 123 Ind Cas 794, *Satya Narain v. Mahadeo Prasad*.  
2. ('47) 34 AIR 1947 (Lah) 319 (319), *Harjimal and Sons v. H. S. Palta & Scns*. ('45) 32 AIR 1945 Nag 178 (179): ILR (1945)

Nag 928 (182), *Lokmat Motor Service, Nagpur v. New Lokmat Lodging*. (Suit for rent based on unstamped rent-note executed by tenant—Document impounded—Plaintiff paying duty and penalty—Suit decreed and amount of duty and penalty saddled as costs against defendant who was responsible for providing the necessary stamp.)

#### Section 29—NOTE 10

1. ('34) 1934 Bom 231 (232, 233): 58 Bom 437: Also see S. 3 Note 25.

#### Section 29—NOTE 11

1. ('30) 17 AIR 1930 Bom 392 (393): 128 I.C. 31 (FB), *Collector, Ahmednagar v. Ram-bhau Tukaram Nirhali*. ('85) 9 Bom 47 (49) (SB), *In re Ramkrishna*.



*separated* share or shares. But under cl. (g) of this section, the proportion in which the stamp duty is payable by the parties to the instrument is in regard to their shares in the *whole* property partitioned and not only in the separated portion of it.<sup>1</sup> Article 45 lays down how the separated portion and the portion from which it is separated are to be determined in each case.

The words "whole property partitioned" have been substituted for the words "property comprised therein" occurring in the corresponding provision of the Stamp Act of 1879. But even under that Act it was held that those words referred to the entire property sought to be divided.<sup>2</sup>

Under the Act of 1879 the stamp duty in respect of a partition deed was payable on the value of the whole of the property partitioned. While under the present Act (Sch. I Art. 45) the duty is levied not on the value of the whole of the property, but only upon the value of the separated part. But the duty as a whole is a burden upon the whole estate, so that the parties who remain undivided have got to bear their share. (See Report of the Select Committee.) Where two brothers effecting a partition fail to pay the stamp duty on the deed of partition and by proceedings before the Collector one of them is compelled to pay the whole stamp duty and penalty he cannot claim half of the duty and penalty from the other party by virtue of S. 29 (g). S. 44 is of no avail in such a case.<sup>2a</sup> (See also S. 44 Note 3).

A defendant in a suit for partition can get his share separated without paying any court-fee but he is liable to pay his share of the stamp duty on the final decree for partition which has to be stamped as an instrument of partition.<sup>3</sup>

The executant of an award directing a partition being the arbitrator, it is his duty under this clause to direct the parties to provide him with the necessary stamp and not to deliver or publish his award on a plain paper.<sup>4</sup>

See also the undermentioned notes<sup>5</sup> given in the Bihar and Bengal Stamp Manuals.

13. Award.—See Note 12.

14. Agreement to pay penalty.—See Note 4.

15. Recovery of expenses as to stamp.—The right to institute a suit for recovery of the stamp duty from a person who is bound to pay such duty under the

#### Section 29—NOTE 12

1. ('92) 15 Mad 164 (166) (FB), *Reference under Stamp Act, S. 46.* (Three out of seven brothers, constituting an undivided Hindu family, executed documents whereby each acknowledged the receipt of certain property worth Rs. 200 made over to him on a division of the family property and acknowledged himself to be liable for 1/7th of the family debts—*Held* that the documents were partition deeds and each member was liable to pay according to share taken under the partition.)

2. ('80) 2 All 664 (666) (FB), *Reference by Board of Revenue N.W.P. under Act, I of 1879.*

('46) 33 AIR 1946 Mad 50 (50): 223 Ind Cas 178, *Sundarami Reddi v. Pattabhirami Reddi.*

3. ('32) 19 AIR 1932 Mad 722 (723): 55 Mad 975: 139 I.C. 457 (DB), *Venkatasubamma v. Ramanadhayya.* (Following AIR 1926 Pat 154.)

4. ('28) 15 AIR 1928 Nag 166 (169): 107 Ind Cas 668, *Ramkumar v. Kushalchand*

*Ganeshdas.*

5. ('31) Beng S M Vol. I p. 31. (NOTE—This clause gives the Revenue Officer full authority in the matter of apportionment of the stamp duty; but the Legal Remembrancer has advised that it would *not* be legal for the Revenue-authority to declare under the clause that the stamp duty in a particular case (*A, B and C* being the parties) where *A* was the applicant for partition and *B and C* were non-applicants, should be wholly paid by *A*—The Legal Remembrancer has held that the Revenue Officer merely assesses the proportion of the stamp duty that, according to the circumstances of the case, it is *equitable* that each party should pay—Although stamp duty on partition deeds is not levied under the Estates Partition Act (Beng. Act V of 1897) (but under this clause of the General Stamp Act,) the principle of apportionment laid down in section 38 of Beng. Act V of 1897 is relevant. (Board's Circular Order No. 18 of May, 1908.)

('40) Bihar S M pp. 115-116. (Do.)



provisions of this section is available, so long as the instrument is not produced before a Court but when once the document is produced before a Court and tendered in evidence the right of recovery of the duty or penalty will be regulated by the special provisions of S. 44. Under sub-s. (3) of that section the person who has paid the duty or penalty will not be entitled to recover the amount unless such amount has been included in the order as to costs of the suit or proceedings in which such document is tendered in evidence.<sup>1</sup>

Section 48 of the Act prescribes the mode of recovery by the Government of any duty or penalty imposed under Chap. IV. It has been held that the person from whom such recovery can be made by the Collector is the person who is bound to pay under S. 29 or his legal representative if he is dead. If the person seeking to admit an unstamped instrument in evidence is not the person liable under S. 29, he cannot be compelled to pay the duty or penalty under S. 48 ; he can only be penalised by not being able to use the document which will remain impounded with the Collector.<sup>2</sup>

See also Notes on Ss. 44 and 48.

### Provincial Amendment.—

#### Section 29A

##### BENGAL

After S. 29 of the main Act the following shall be *inserted*, namely—

*Application of Ss 23A, 24 and 29 to instrument chargeable with duty under Sch. IA.* "29A. In applying Ss. 23A, 24 or 29 to any instrument chargeable with a higher rate of duty under the Bengal Stamp (Amendment) Act, 1922, or the Indian Stamp (Bengal Amendment) Act, 1935, the references in those sections to the several articles in Sch. I shall be deemed to be references to the corresponding articles in Sch. IA."

—*Bengal Acts III of 1922, S. 9 (1-4-1922) and XII of 1935, S. 5. (1-6-1935.)*

\*30. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

<sup>a</sup>[Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped-receipt for the same.]

a. This paragraph was added by Section 5 of the Indian Stamp (Amendment) Act, 1906 (V of 1906)

\*[1879—S. 58 ; 1869—S. 27 (a); 1862—S. 29 ; 1860—S. 15.]

#### Section 29—NOTE 15

1. ('37) 24 AIR 1937 Mad 763 (764) : 174 Ind Cas 20, *Panakala Rao v. Kumaraswami*. Also see S. 44 Note 4.

2. ('40) 27 AIR 1940 Lah 315 (318) : ILR (1940) Lah 637 : 189 Ind Cas 709 (SB), *Hakim Mohammad Hussain v. Emperor*. (30 All 271 not followed.)

(Suit forejectment—Along with plaint plaintiff producing unstamped memorandum of the terms of lease—Court suo motu calling upon parties to admit documents—Defendant admitting document subject to objection as to its admissibility for want of stamp—Trial Court calling upon plaintiff to pay duty and penalty, on his refusal impounding docu-

ment for realisation of stamp duty—*Held* that mere production of the document by plaintiff did not amount to tender of that document in evidence and unless and until the plaintiff tenders the document in evidence and seeks to use it as such he could not be called upon to make good the deficiency—The decision in so far as it implies that if the plaintiff who was not primarily responsible for the payment of duty, had tendered the document in evidence he could be required to make good the deficiency is opposed to the decision in AIR 1940 Lah 315 ILR (1940) Lah 637 (SB) on which it relies.) ('47) 34 AIR 1947 Lah 319 (319), *Harjimal & Sons v. H. S. Palta and Sons*.



## Synopsis

- |   |  |
|---|--|
| 1. Scope of the section.<br>2. Mode of proof of payment.<br>3. Penalty.<br>4. "On demand by the person paying."<br>5. Exemptions. | 6. Receipt for movable property.<br>7. Receipt for immovable property.<br>8. Money sent by money order.<br>9. Money. |
|---|--|

**1. Scope of the section.**—This section makes it obligatory on a person to give a duly stamped receipt in certain cases. They are :

- (1) when he receives any money exceeding Rs. 20 ; or
- (2) when he receives any bill of exchange, cheque or promissory note for an amount exceeding Rs. 20 ; or
- (3) when he receives in satisfaction or part satisfaction of a debt any movable property exceeding Rs. 20 in value.

Such a person is required to give a stamped receipt provided there is a demand for the same by the person paying or delivering such money, bill, cheque, note or property.

The second paragraph of the section requires a fire-insurance company to give a duly stamped receipt for the premium received for the renewal of a contract of fire-insurance. The reason why the receipt for the first premium is not required to be stamped is that generally no receipt is given for the first premium, the original policy being simply handed over to the insured in exchange for cash.<sup>1</sup>

As to the meaning of the word "receipt" see S. 2. (23).

As to the duty chargeable in respect of a receipt in ordinary cases, see Art. 53 and in respect of receipt for payment of a premium on renewal of fire-insurance, see Art. 47-B (2).

**2. Mode of proof of payment.**—The section only provides that a party making a payment may demand a receipt. Consequently, it does not preclude any evidence except a receipt being adduced to prove payment. Even when a receipt is given and is not produced evidence *aliunde* is admissible under S. 91 of the Evidence Act.<sup>1</sup>

**3. Penalty.**—A person who gives an unstamped receipt, whether a stamped receipt was demanded by the payer or not, commits an offence under S. 62 (1) (b) ; and where he refuses or neglects to give a duly stamped receipt on demand by the payer, he commits an offence under S. 65 (a) of the Act. But there can be two offences under the two sections in respect of the same transaction. Thus, where a person gives an unstamped receipt and refuses to give a stamped one on the same being demanded, he commits an offence under S. 62 as well as one under S. 65.<sup>1</sup>

See also Notes on Ss. 62 and 65.

**4. "On demand by the person paying."**—A person is required to give a receipt only if there is a demand for the same by the person paying or delivering the money, bill etc. If, however, a person receiving money etc., gives a receipt even when not demanded, he must stamp it in accordance with law. Failure to give a duly stamped receipt is an offence under S. 62 (1) (b).<sup>1</sup>

## Section 30—NOTE 1

1. See Report of Select Committee on the Indian Stamp Act Amendment Bill No. I of 1906.

## Section 30—NOTE 2

1. ('98) 8 Mad L Jour 269 (271) (DB), *Seshayya v. Subbamma*.

## Section 30—NOTE 3

1. ('33) 20 AIR 1933 Bom 462 (463) : 146 Ind Cas 807 (DB), *Girdhardas v. Emperor*.

(1900) 27 Cal 324 (333) (DB), *Queen-Empress v. Khetter Mohun*.

Also see S. 62 Note 15 and S. 65 Note 2.

## Section 30—NOTE 4

1. See ('33) Mad S M p. 14. (Citing B P 3482, 15th November 1883—Where a person receives a cheque, etc., for more than Rs. 20 and voluntarily gives a receipt, he is bound, under section 30, to stamp it just as much as if it had been demanded of him.)



The demand contemplated by this section is demand by the person who pays the money, in other words, from whose pocket the money comes and who has a right to demand the receipt; it is not the demand of the intermediary who actually pays the money.<sup>2</sup> Thus, where an unstamped receipt was passed by the accused in favour of his own clerk who received the money from a company and paid it into the accused's firm, it was held that the company from whose pocket the money was paid, and not the clerk, was entitled to the receipt, and that there being no demand from the company, the accused did not commit an offence under S. 65.<sup>3</sup>

**5. Exemptions.**—The exemptions to Art. 53 which prescribes the duty for a receipt mention the kinds of receipts which are exempted from duty. Receipts granted by Presidents of District Boards for amounts transferred from Provincial to Local Funds by adjustments in the Collector's books of accounts are exempt from stamp duty as being receipts for payment of money without consideration within the meaning of Art. 53, Exemption (b).<sup>1</sup>

For further exemptions, see Reductions and Remissions in Appendix D.

**6. Receipt for movable property.**—Under this section a receipt for movable property exceeding Rs. 20 in value is required only when that property is received in satisfaction of a debt. The receipt of fresh stamps in lieu of spoiled or unused stamps can hardly be considered as property received in satisfaction of a debt or demand, and as such no stamp is necessary for a receipt in regard to such stamps.<sup>1</sup>

**7. Receipt for immovable property.**—It is only when a person receives any money exceeding Rs. 20 in amount or a bill of exchange, cheque or promissory note for an amount exceeding Rs. 20 or any movable property of the like amount in value that this section makes it obligatory on his part to pass a duly stamped receipt. The section has no application where immovable property exceeding Rs. 20 in value is made over by a debtor to a creditor in satisfaction of a pre-existing liability. Thus, where the liability under a promissory note is extinguished by the execution by the debtor of a registered lease of his immovable property in favour of the creditor, the latter is not bound to pass any receipt for the satisfaction of the debt due on the promissory note.<sup>1</sup>

**8. Money sent by money order.**—A person is entitled to demand and get a duly stamped receipt if he makes the payment himself or through his agent. Where he sends money by money order, the money order receipt which is exempt from stamp duty<sup>1</sup> is a good and sufficient receipt and it is not incumbent upon the person receiving money to give another receipt duly stamped.<sup>2</sup> The remitter cannot demand such a receipt on the ground that he has several accounts with the payee and that he is entitled to have the money applied towards a particular account and to obtain a receipt specifying accordingly. The reason is that the section does not require a person receiving money to specify the particular purpose for which the money was paid. He is only required to give a receipt for the sum paid.<sup>3</sup>

2. ('33) 20 AIR 1933 Bom 462 (464): 146 Ind Cas 807 (DB), *Girdhardas v. Emperor*.

3. ('33) 20 AIR 1933 Bom 462 (464): 146 Ind Cas 807 (DB), *Girdhardas v. Emperor*. Also see S. 65 Note 1.

Section 30—NOTE 5

1. ('11) 9 Ind Cas 342 (342) (FB) (Mad), *In re Secretary to the Commissioner of salt*. Also see Art. 53 Note 4.

Section 30—NOTE 6

1. ('31) Beng S M Vol I p. 32. (Citing, Board's Collection 13, File 88 of 1905.) ('40) Bihar S M P. 116. (Do.)

Section 30—NOTE 7

1. ('32) 19 AIR 1932 Nag 172 (172, 173): 28 Nag L R 216: 140 Ind Cas 297, *Emperor v. Sukhdeo*.

Also see S. 2 (23) Note 16 and S. 65 Note 1.

Section 30—NOTE 8

1. See "Reductions and Remissions" relating to Receipts in Appendix D.

2. ('12) 34 All 192 (196): 13 Ind Cas 778 (DB), *Balmukund v. Emperor*.

Also see Art. 53 Note 9.

3. ('12) 34 All 192 (196): 13 Ind Cas 778 (DB), *Balmukund v. Emperor*.



9. **Money.**—The word “money” is defined in the undermentioned case<sup>1</sup> as meaning and including not only coin, but also bank notes, Government promissory notes, bank deposits, and otherwise and generally any paper obligation or security that is immediately and certainly convertible into cash so that nothing can interfere with or prevent such conversion.

### CHAPTER III.

#### ADJUDICATION AS TO STAMPS.

\*31. (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, for the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly :

Provided that—

- (a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable ; and
- (b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

1. **Scope of the section.**—This section provides for the adjudication by the Collector of the proper stamp duty leviable upon any instrument. It is intended for those subjects who are not sure what duty is payable and yet are anxious to stamp the instrument properly. This section, however, must be read subject to proviso to S. 32 (3). This section prescribes no time limit for making an application to the Collector for adjudication as to the proper stamp-duty. The time-limit mentioned in proviso (a) to S. 32 (3) does not govern such application. The only effect of that proviso is that if the instrument is brought to the Collector within one month of its execution the applicant would be entitled to have the Collector's certificate endorsed on the instrument on payment of the deficit duty, if any, but without having to pay the penalty. But if he seeks the Collector's adjudications after the expiry of one month, the Collector has to proceed under S. 33 to impound the document and to determine under S. 40 whether the instrument is duly stamped and in case he is of opinion that it is not duly stamped the applicant will have to pay the deficit duty together with the prescribed penalty.<sup>1a</sup> (See also S. 32 Note 3.)

\*[1879—S. 30 ; 1869—S. 39 ; 1862—S. 19. Cf. (1870) 33 & 34 Vict., C. 97—S. 18(1), (3) ; (1891) 54 & 55 Vict., C. 39—S. 12 (1), (2), (6), (c).]

#### NOTE 9

1. ('81) 3 All 788 (793) : 1881 All W N 74 | (FB), Reference by the Board of Revenue. Also see S. 2 (23) Note 11.



Under this section the instrument may or may not have been executed. An unexecuted instrument may be brought to the Collector merely for the purpose of getting a decision.<sup>1</sup> "It may be that after the decision, the parties will come to the conclusion that the instrument should not be entered into at all. It may be that they will still come to the conclusion that the instrument should be entered into and that other steps will have to be taken."<sup>2</sup>

For the purpose of adjudication, the Collector may require to be furnished with an abstract of the instrument. He may also require an affidavit and other evidence to ascertain whether the facts and circumstances relating to the chargeability are truly stated in the instrument or not.

If the Collector is in doubt as to the amount of duty chargeable on an instrument, he may refer the question under S. 56, to the Chief Controlling Revenue authority for decision.<sup>3</sup>

If the executant of a deed who is in doubt about the proper stamp, consults a registering officer on the subject before formal presentation, the required information may be given to him without impounding the deed, but it should be explained to the party that if he wishes to obtain an authoritative opinion he must apply to the Collector under this section.<sup>4</sup>

Beyond the deficient duty and the adjudication fee, no penalty for insufficient stamp is leviable. Under the Act of 1869, penalty in addition to the duty and adjudication fee was required to be paid, where the Collector adjudicated the instrument as insufficiently stamped.

There is no objection to the presentation of documents for adjudication under this section in a district different from that in which they were executed or the property concerned lay.<sup>5</sup>

After the stamp duty is adjudicated, the procedure to be followed is laid down in S. 32.

2. **Finality of Collector's adjudication.**—See Note 2 on Section 32.

3. **Return of allotment of shares of company.**—Where a company files with the Registrar a return of the allotment of shares and the contract constituting the title of the allottee is not reduced to writing, the company is required, under S. 104 (2) of the Companies Act, 1913, to file with the Registrar certain particulars of the contract, and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under this section. (See S. 104 of the Companies Act, 1913).

\*32. (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and—

(a) the Collector determines that it is already fully stamped, or

Section 31—NOTE 1  
(146) 33 AIR 1946 Mad 437 (440) : ILR (1947) Mad 141 : 227 Ind Cas 360 (DB), *Sethuraman v. Ramanathan*.  
1. ('32) 19 AIR 1932 Cal 736 (737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook & Kelvey*. (Per Rankin, C. J.)  
2. ('32) 19 AIR 1932 Cal 736 (737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook &*

*Kelvey*. (Per Rankin, C. J.)  
3. ('33) Mad S M p. 36. (Citing, B. Ps. 281/2662-R. Mis., 21st November 1903 : 8-R., Pross, Mis., 5th November 1930.)  
4. ('33) Mad S M p. 36. (Citing, B. Ps. 221, 7th February 1887 : 94, 6th May 1887.)  
5. ('33) Mad S M p. 36. (Citing, B. P. 1442-R., Mis., 9th October 1916.)



- (b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be ; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Provided that nothing in this section shall authorise the Collector to endorse—

- (a) any instrument executed or first executed in <sup>a</sup>[the Provinces] and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be ;
- (b) any instrument executed or first executed out of <sup>a</sup>[the Provinces] and brought to him after the expiration of three months after it has been first received in <sup>a</sup>[the Provinces] ; or
- (c) any instrument chargeable with the duty of one anna <sup>b</sup>[or half an anna] or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

a. Substituted for "British India" by I. O.

b. These words were inserted by S. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

### Provincial Amendments.

#### BENGAL

In section 32 of the main Act—

(i) in clause (a) of the proviso, after the words "any instrument" insert the words "other than an instrument chargeable with a duty under clause (bb) of the first proviso to section 3" ;

(ii) omit the word "or" at the end of clause (b) of the proviso ;

(iii) after clause (c) of the proviso insert the following, namely—

"or

(d) any instrument chargeable with duty under clause (bb) of the first proviso to section 3 and brought to him after the expiration of three months of the date on which it is first received in Bengal."—*Beng. Act III of 1922, S. 10.* [1-4-1922.]

#### BIHAR

Same as that of Bengal, except, in clause (d) for the word "of" occurring before the words "the date" substitute the word "from" and for the word "Bengal" substitute the word "Bihar".—*Bihar Act VI of 1937, S. 10.* [1-1-1938.]

#### BOMBAY

In proviso (c) to section 32, before the words "one anna" insert the words "two annas".—*Bom. Act II of 1932, Pt. IV, S. 15 (2).* [1-4-1932.]

\*[1879—S. 31 ; 1869—S. 39 ; 1862—S. 19, Cf. (1870) 33 & 34 Vict., C. 97—S. 18 (2), (3), (4), (5); (1891) 54 & 55 Vict., C. 39—S. 12 (3), (4), (5), (6) (a) (b).]



**CENTRAL PROVINCES**

Same as that of Bengal, except, in clause (d) for the word "of" occurring before the words "the date" *substitute* the word "from" and for the word "Bengal" *substitute* the words "the Central Provinces and Berar."—*C. P. Act VI of 1939, S. 9.* [1-7-1939.]

**MADRAS**

In clause (c) of the proviso at the end of section 32,

(i) before the words "one anna" *insert* the words "one and a half annas" ;

—*Madras Act XVI of 1943, S. 4 (c)* [1-10-1943.]

(ii) after the words "half an anna" *insert* the following, namely—

"or a mortgage of crop (article 34 (a) of schedule IA) chargeable under clauses (aa) or (bb) of section 3 with a duty of four annas."

—*Madras Acts VI of 1922, S. 11* [25-4-1922] *and*  
*XVI of 1943, S. 4 (c).* [1-10-1943.]

**ORISSA**

Same as that of Bengal, except, for the word "of" occurring before the words "the date" *substitute* the word "from" and for the word "Bengal" *substitute* the words "the Province of Orissa."

—*Orissa Act VI of 1943, S. 10.* [26-4-1943.]

**PUNJAB**

Same as that of Bengal, except the following :

(i) in clauses (a) and (d) of the proviso after the word and figure "section 3" *insert* the words and figures "as amended by the Indian Stamp (Punjab Amendment) Act, 1922" ;

(ii) in clause (d) of the proviso, for the word "of" occurring before the words "the date" *substitute* the word "from" and for the word "Bengal" *substitute* the words "the Punjab."—*Punjab Act VIII of 1922, S. 14.* [15-1-1923.]

**SIND**

Same as that of Bombay.—*Sind Act I of 1938, S.2.* [31-3-1938.]

**UNITED PROVINCES**

Same as that of Bengal, except, in clause (d) for the word "of" occurring before the words "the date" *substitute* the word "from" and for the word "Bengal" *substitute* the words "the United Provinces."

—*U. P. Act. III of 1936, S. 9.* [1-5-1936]

**RELEVANT REFERENCE TO OTHER ACT.**

For refund of duty in the case of certain instruments, *see* the Indian (Specified Instruments) Stamp Act, 1924 (XIII of 1924), section 3 (4), the text of which is given in Appendix J.

**Synopsis**

- |                                      |   |
|--------------------------------------|---|
| 1. Scope of the section.             | 4. Proviso (c).   |
| 2. Finality of Collector's decision. | 5. Allowance for spoiled stamps in regard to documents endorsed under this section. |
| 3. Provisos (a) and (b).             |   |

**1. Scope of the section.**—This section lays down the procedure to be followed after the Collector has determined the stamp duty chargeable on the instrument brought to him for adjudication under S. 31. When the instrument is in his opinion one chargeable with duty, and the Collector determines that it is already fully stamped or the duty determined by the Collector or the deficient portion thereof has been paid, the Collector shall under this section certify by an endorsement on the instrument that the full duty chargeable has been paid. When the instrument



is not chargeable with duty, the Collector shall certify that the instrument is not so chargeable. The endorsement by the Collector must be on the instrument itself. A letter from the Collector expressing his opinion that no stamp duty was necessary is not a certificate within the meaning of this section.<sup>1</sup>

Sub-section (3) of this section provides that the instrument bearing an endorsement under this section shall be deemed to be duly stamped or not chargeable with duty, as the case may be. The decision of the Collector as endorsed on the instrument is final and cannot be questioned. (See Note 2).

Where the subject refuses to pay the stamp duty, as determined by the Collector under S. 31, in respect of an instrument which has been executed, the Collector must impound the document under S. 33 and proceed to recover the stamp duty as laid down in S. 40.

Section 42 contains a provision similar to this section, for those instruments on which the stamp duty has been paid under S. 35, S. 40 or S. 41.

**2. Finality of Collector's decision.**—Sub-Section (3) of this section provides that the instrument bearing an endorsement under this section shall be deemed to be duly stamped or not chargeable with duty as the case may be. In other words, it makes the Collector's certificate final on the question of stamp.<sup>1</sup> See also S. 35, Proviso (e).

Under S. 40 of the Act of 1869, all certificates and orders of the Collector were open to revision on appeal or otherwise by the Chief Controlling Revenue-authority. This provision was omitted in the Act of 1879. Under the present Act, the general power of control over the Collector, given to the Chief Controlling Revenue-authority is contained in S. 56 (1). That sub-section refers to powers exercisable by the Collector under Chapters IV and V. It does not refer to the powers exercisable by the Collector under Chapter III, in which S. 31 and the present section occur. Where, however, the Collector is in doubt as to the proper decision when acting under S. 31, sub-s. (2) of S. 56 gives the Collector power to state the case to the Chief Controlling Revenue-authority. If he does so, the Collector is bound to charge the stamp duty in conformity with that decision (see S. 56 (3).) The Board of Revenue, therefore, has no controlling power over the Collector, when the latter grants a certificate under S. 32 without referring the case under S. 56 (2).<sup>2</sup> The effect is to make the determination by the Collector under S. 31 which has been duly endorsed on the instrument under this section, final in respect of that instrument.<sup>3</sup> such a case cannot be referred under S. 57 to the High Court by the Revenue-authorities, for it is well settled that unless the case is pending and not completed, no reference under S. 57 to the High Court can be made.<sup>4</sup>

Section 32—NOTE 1

1. ('42) 29 AIR 1942 Mad 381 (381): 202 Ind Cas 77, *Murugayya Pillai v. Rajagopala Pillai*.

Section 32—NOTE 2

1. ('11) 7 Nag LR 26 (29): 10 Ind Cas 702 (DB), *Tukaram v. Sonaji*.  
('26) 13 AIR 1926 Sind 211 (213): 94 Ind Cas 747, *Parsram Hirji v. Parsram Hasanand*.  
('35) 22 AIR 1935 Sind 48 (49): 28 Sind LR 266: 153 I.C. 635, *Gangaram Shewaram v. Mallik Nur Ahmed*.  
[See also (1852) 8 Ex 97 (104): 91 R R 387 (393): 22 LJ Ex 85: 19 I.T (OS) 257: 155 E R 1275, *Prudential Mutual Assurance Investment and Loan Association v. Curzon*.]
2. ('33) Mad S M p. 37. (Citing, C. O. 1314, Revenue, 25th November 1882.)  
('32) 19 AIR 1932 Cal 736 (737): 59 Cal 1171:

- 140 Ind Cas 57 (SB), *In re Cook & Kelvey*.  
3. ('02) 25 Mad 751 (752) (FB), *Reference under Stamp Act, S. 57*.

Also see S. 56 Note 1.

4. ('32) 19 AIR 1932 Cal 736 (736, 737): 59 Cal 1171: 140 Ind Cas 57 (SB), *In re Cook & kelvey*.  
('02) 25 Mad 751 (752) (FB), *Reference under Stamp Act, S. 57*.

- ('02) 25 Mad 752 (760) (FB), *Reference under Stamp Act, S. 57*.

- ('26) 13 AIR 1926 Bom 51 (52): 91 Ind Cas 299 (DB), *Usuf Dadabhai v. Chand Mohamed*.  
('18) 5 AIR 1918 All 181 (182): 40 All 128: 47 Ind Cas 299 (SB), *In the matter of Khub Chand*.

- [See also ('32) 19 AIR 1932 Lah 495 (496): 13 Lah 745: 138 Ind Cas 758 (SB), *Thakar Das v. Emperor*.]  
Also see S. 57 Note 3.



Where, however, after the subject refuses to make the payment of stamp duty as determined under S. 31, the Collector impounds the document under S. 33 and proceeds to require the payment of duty and penalty under S. 40, the party dissatisfied with the Collector's decision, can apply, under S. 56, to the Chief Controlling Revenue-authority to intervene in such a proceeding before it is completed, as S. 40 occurs in Chap. IV.<sup>5</sup> But the subject who is disappointed with the decision of the Collector under S. 31, has no right to apply to the Board of Revenue to interfere with the ruling of the Collector *before* the Collector has impounded the instrument under S. 33.<sup>6</sup>

Even where the Collector endorses the instrument in disregard of any of the clauses in the proviso, it has been held that the decision of the Collector would be final and not open to question, and that the Collector's action is only *irregular*.<sup>7</sup> It was, however, held in the undernoted English decisions<sup>8</sup> that the instruments therein in question, which had been stamped by the Commissioner of Stamp against the positive directions of the Stamp Law, were not receivable in evidence.

**3. Proviso (a) and (b).**—The Collector cannot endorse an instrument brought to him for adjudication after the expiry of the period mentioned in cls. (a) and (b) of the proviso.<sup>1</sup> In the case of an instrument executed in the Provinces of India, the effect of cl. (a) is to enlarge the time for stamping as provided in S. 17 by one month if it is brought to the Collector for adjudication as to proper stamp duty under S. 31.

Where the instrument is brought after the time mentioned, the proper course for the Collector is to impound it and levy the duty and penalty under S. 40<sup>1a</sup>. In such a case, the adjudication fee required under S. 31, cannot be levied in addition to the penalty and stamp duty.<sup>2</sup>

As to the finality of the endorsement when it is made in disregard of any of these clauses, see Note 2.

**4. Proviso (c).**—Clause (c) of the proviso precludes the Collector from endorsing under S. 32 any instrument chargeable with duty of one anna or half an anna or any bill of exchange or promissory note. Instruments chargeable under Arts. 1, 13, 28, 41, 47, 49, 53 and 60 are instances of instruments chargeable with duty of one anna or half an anna, and as such, cannot be endorsed by the Collector under S. 32.

5. ('02) 25 Mad 752 (760) (FB), *Reference under Stamp Act, S. 57*. (But not after the certificate by the Collector is granted.)

('32) 19 AIR 1932 Cal 736 (737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook & Kelvey*.

('34) 21 AIR 1934 Cal 803 (805) : 61 Cal 556 : 152 Ind Cas 601 (SB), *In re United Provinces Electric Supply Co. Ltd.*

Also see S. 56 Note 2.

6. ('32) 19 AIR 1932 Cal 736 (737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook & Kelvey*.

7. ('81) 3 All 115 (117) (DB), *Girdhari Das v. Jagan Nath*. (Endorsement of promissory note in disregard of Proviso (c).)

('42) 29 AIR 1942 Mad 381 (381) : 202 Ind Cas 77, *Murugayya Pillai v. Rajagopala Pillai*. (Erroneous decision by Collector that no stamp is necessary or endorsement in contravention of Proviso (a).)

(1793) 170 E R 139 (139) : Peake 230 (231), *Wright v. Riley*.

[But see ('37) 20 Nag L Jour 246 (247), *Ram-*

*chandra v. Zolba*. (An order by the Collector validating a pronote although he is expressly forbidden (by S. 32 (c) of the proviso) to do so, is illegal.)]

8. (1811) 170 E R 1320 (1321) : 3 Camp 103 (105), *Rode Rick v. Hovil*.

(1825) 28 R R 230 (236) : 3 L J (OS) K B 185 : 107 E R 1046, *Green v. Davies*.

#### Section 32—NOTE 3

1. ('42) 29 AIR 1942 Mad 381 (381) : 202 Ind Cas 77, *Murugayya Pillai v. Rajagopala Pillai*. (Instrument brought in contravention of Proviso (a).)

('35) 22 AIR 1935 Nag 54 (55) : 31 Nag L R 162 : 156 Ind Cas 213, *Kedarmal Raghunath v. Ratiram*. (Instrument brought in contravention of Proviso (b).)

('46) 33 AIR 1946 Mad 437 (444) : ILR (1947) Mad 141 : 227 Ind Cas 360 (DB), *Sethuraman v. Ramanathan*.

2. ('33) Mad S M p. 37. (Citing, B. P. 3460, 14th November, 1883.)



Before the amendment of the Act in 1923, instruments chargeable under Arts. 19, 36, 37 and 52 also could not be certified under this section, as they were instruments leviable with one anna stamp duty. By the amending Act XLIII of 1923, the duty on these instruments was raised to two annas. After that Act came into force, the instruments chargeable under those articles therefore, could be brought to the Collector for adjudication and certification. Under the Indian (Specified Instruments) Stamp Act, XIII of 1924, any sum recovered in respect of the instruments mentioned above, by way of fee under sub-s. (1) of this section after 30th September 1923 and before 1st April 1924, was refunded.

As to the finality of endorsement by the Collector in contravention of this proviso see Note 2.

**5. Allowance for spoiled stamps in regard to documents endorsed under this section.**—The certificate of the Collector under this section that the full duty chargeable on the instrument has been paid is an impressed stamp within the meaning of S. 49 (see explanation to that section). An allowance for spoiled stamps, therefore, may be made under that section, where after the Collector had certified payment of the full duty under this section, a clerical error is discovered in the deed, rendering the instrument useless.<sup>1</sup>

## CHAPTER IV.

### GENERAL

The following extract from the Punjab Stamp Manual summarises briefly the procedure detailed in this chapter :

“By S. 33 all public officers, with certain exceptions, are required to examine every instrument chargeable with duty which comes before them in the performance of their official functions, and to impound any instrument which appears not to be duly stamped. Under S. 35 the instrument may be admitted in evidence in a Court, if the party desiring to use it, shall pay the necessary stamp duty together with a penalty of Rs. 5, or when ten times the deficiency exceeds Rs. 5 then a penalty of ten times such amount. If the Court is doubtful about the amount of stamp duty leviable, it may proceed under S. 60. When such a document is admitted in evidence—and the decision of the Court in this matter is final (S. 36)—the Court should certify (S. 42) by endorsement on the instrument that the duty and penalty have been paid, and the name and residence of the person paying them. An authenticated copy of the impounded instrument admitted in evidence similarly endorsed together with the money should then be sent to the Collector (S. 38). If the instrument has not been admitted in evidence for any reason it should be sent in original to the Collector after an authenticated copy has been prepared (S. 38 (2) ), and retained by the Court, for the officer impounding is not responsible for any damage in transit. The instrument should be returned to the Court by the Collector after he has done what is required of him by the Act (S. 40 (3)). Section 42 (2) entitles the person concerned to reclaim the impounded instrument, but the Court shall not, in any circumstances, deliver it before the expiration of one month from the date of impounding it, and if the Collector has certified (S. 43) that its further detention is necessary, it shall not deliver it so long as such certificate is not cancelled.

Section 32—NOTE 5  
1. See ('88) 11 Mad 37 (38) (FB), *Reference* | *under Stamp Act, S. 46. (Case under Act of 1879.)*



Officers who are not authorized to receive evidence should send the impounded instrument to the Collector in original (S. 38 (2)) in the manner indicated above.

On receipt of a copy of an instrument which has been impounded and admitted in evidence, the Collector should satisfy himself that the proper stamp duty has been realized, and if it has not, he may proceed under S. 61 to obtain a declaration to this effect from the Court to which appeals ordinarily lie from the impounding Court, and thereafter proceed as described in that section. The Collector should also decide whether the person concerned ought to be prosecuted in the interests of the stamp law (Ss. 43, 61, 70), and conversely whether the penalty realized or any portion of it should be refunded (S. 39). When the Collector receives an instrument impounded but not admitted in evidence, he should decide whether stamp duty is leviable or whether the instrument is duly stamped already. He should certify accordingly and his decision is final (S. 40). If stamp duty be leviable, he should require it to be paid together with the penalty provided for in S. 40 (1) (b). Under S. 41 the Collector may certify an instrument brought to him in the circumstances stated in the section. All duties, penalties and other charges may be recovered under S. 48. The Collector should return the document when he has done with it to the officer from whom he received it (S. 40 (3)). It should be noted that all instruments with the exceptions of receipts chargeable with the duty of one annas and in the case of promissory notes chargeable with a duty of one anna, two annas and four annas, are excluded from the provisions of Ss. 35, 40 and 41 and the Collector cannot certify the impounded document after levying a penalty or after prosecuting the offender.

Section 34 permits an audit officer to have an unstamped receipt stamped in the course of an audit of a public account, and S. 35 (b) allows an unstamped receipt to be admitted in evidence on payment by the person tendering it of a penalty of rupee one."

—(1934) *Punjab Stamp Manual, Part I-B, Ch. 3, para 20.*

#### INSTRUMENTS NOT DULY STAMPED.

**\*33. (1)** Every person having by law or consent of parties authority to receive Examination and evidence, and every person in charge of a public office, except an impounding of instr- officer of police, before whom any instrument, chargeable, in uments. his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in <sup>a</sup>[the Provinces] when such instrument was executed or first executed :

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 ;

\*[1879—S. 33 ; 1869—Ss. 22, 23.]



- (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.
- (3) For the purposes of this section, in cases of doubt,—
- (a) <sup>b</sup>[the collecting Government] may determine what offices shall be deemed to be public offices ; and
- (b) <sup>c</sup>[the collecting Government] may determine who shall be deemed to be persons in charge of public offices.
- a. *Substituted* for "British India" by I. O.
- b. *Substituted* for the words "the Governor General in Council" by A. O.
- c. *Substituted* for the words "the Local Government" by A. O.

**East Bengal****\*Provincial Amendment**

As to the modification in the interpretation of the words "duly stamped", see the Indian stamp (East Bengal Amendment) Act, 1949 (E. B. Act IX of 1949) the text of which is given under S. 2 (11).

**Notifications.**

1. All functions of the Central Government under, or in relation to, S. 33 have been entrusted to Provincial Governments.—*See* Government of India, Finance Department (Central Revenues) Notification No. 9, dated 13-11-1937.

2. The office of a returning officer appointed for the purposes of an election to a legislative body constituted under the Government of India Act is not a public office for the purposes of sub-s. (3) of S. 33.—*See* Government of India, Finance Department, Notification No. 2962-F., dated 19-11-1920 .

**Synopsis**

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|--|--|
| 1. Scope and object of the section.                                    | 7. Objection by Court or officer suo motu.           |
| 2. Persons having authority by consent of parties to receive evidence. | 8. Counsel's duty as regards stamp objections.       |
| 3. Person in charge of public office.                                  | 9. Arbitration proceedings—Objection as to stamp in. |
| 4. "Is produced or comes in the performance of his functions."         | 10. Proviso (a).                                     |
| 5. "Duly stamped."   | 11. High Court.                                      |
| 6. "Impound."  | 12. Revision against order as to impounding.         |
|  | 13. Appellate Court, power of.                       |

1. **Scope and object of the section.**—This section deals with the examination and impounding of instruments not duly stamped. Under this section persons having by law or consent of parties authority to receive evidence and public officers are required to examine documents that are produced or which come before them in the performance of their functions and to impound them if in their opinion they are not duly stamped. This duty of examining and impounding documents is *obligatory* on the persons mentioned and the section leaves no option in this respect.<sup>1</sup>

The most important object of this and the succeeding sections is to stop as far as practicable every means of escape from the liability which the law imposes upon the executants of instruments, to stamp duty.<sup>2</sup>

After impounding the document, the officer impounding it has to proceed under S. 38 which provides for the sending of the document to the Collector. This procedure applies also to cases where the instrument is admitted in evidence under S. 35 on payment of duty and penalty. When the instrument is sent to the Collector, the decision finally rests with him whether the instrument was really insufficiently stamped or not.<sup>3</sup>

**Section 33—NOTE 1**

1. ('34) Pun S M : Chap. 3. Notes on Sections, p. 12.

('26) 13 AIR 1926 All 478 (478) : 93 Ind Cas 960, *Pearaylal v. Sukhan Ram*. (Instrument must be impounded before being admitted

in evidence.)

2. ('34) Pun S M : Chap 3. Notes on Sections, p. 12.

3. ('26) 13 AIR 1926 All 478 (478) : 93 Ind Cas 960, *Pearaylal v. Sukhan Ram*. (That duty cannot be discharged by the appellate Court.)



2. **Persons having authority by consent of parties to receive evidence.**—These words are evidently intended to cover the cases of persons such as arbitrators, local commissioners, etc., who are authorised to receive evidence but are not public officers.<sup>1</sup> Hence even if the arbitrators are not public officers, a duty is cast upon them to impound documents that are produced or which come before them in the performance of their functions if they think that they are not duly stamped.

3. **Person in charge of public office.**—Under this section a duty of examining and impounding documents is cast on every *person in charge of a public office*, except an officer of police. A “public officer” is not necessarily a “person in charge of a public office.” Thus, an Excise Inspector,<sup>1</sup> or a Revenue Inspector,<sup>2</sup> or a Taluk Head Accountant or a Sub-Treasury Officer<sup>3</sup> is not in charge of any public office and cannot impound documents under this section.

A Judge is a person in charge of a public office.<sup>4</sup> He is also a person having authority to receive evidence. A Special Deputy Tahsildar on Resettlement duty is also a “person in charge of a public office.”<sup>5</sup>

Under sub-s. (3) of this section the collecting Government is empowered to determine, in cases of doubt, as to what offices shall be deemed to be public offices and who shall be deemed to be persons in charge of public offices. Thus the office of a returning officer appointed for the purposes of an election to a legislative body constituted under the Government of India Act is not a public office. (Government of India Finance Department, Notification No. 2962-F., dated the 19th November 1920).<sup>6</sup>

In Madras the Board of Revenue has been authorised to determine who shall be deemed to be persons in charge of public offices for the purposes of this section.<sup>7</sup>

4. **“Is produced or comes in the performance of his functions.”**—Under this section an instrument can be impounded by any person referred to in the section only when such instrument is produced or comes before him in the *performance of his functions*. This requirement holds good in every case and must be satisfied in respect of every officer referred to in the section whether he be a Judge, Registrar or any other public officer.<sup>1</sup>

The word “produce” has a technical meaning and means either produced in response to a summons or produced voluntarily for some judicial purpose, such, for instance, as evidence. It cannot refer to a document which falls accidentally or incidentally into a Judge’s hands. It carries with it a mental element just as the word “deliver”. There must be an intention to produce and the mere physical act of production is not enough when there is no intention to produce. It is further necessary that the document should come before the Judge (or other officer) in the performance of his functions *as a Judge* (or other officer, as the case may be).<sup>2</sup>

#### Section 33—NOTE 2

1. ('32) 19 AIR 1932 Lah 495 (497) : 13 Lah 745 : 138 Ind Cas 758 (SB), *Thakar Das v. Emperor*.

#### Section 33—NOTE 3

1. ('34) Pun S M : Chap. 3. Notes on Sections, p. 12.
2. ('33) Mad S M p. 38. (Citing, B. P. 72, 18th January 1887.)
3. ('33) Mad S M p. 39. (Citing, B. P. 211-R., Mis., 25th August 1930.)
4. See ('32) 19 AIR 1932 Lah 495 (497) : 13 Lah 745 : 138 Ind Cas 758 (SB), *Thakardas v. Emperor*.
5. ('33) Mad S M p. 39. (Citing, B. P. 714-R., Mis., 18th June 1912.)

6. ('40) Bihar S M p. 120. (Government of India, Finance Department, Notification No. 2962-F., dated the 19th November 1920.)

7. ('33) Mad S M p. 39. (Citing, G. O. 2911, S. R., 6th October 1914.)

#### Section 33—NOTE 4

1. ('32) 19 AIR 1932 Lah 495 (497) : 13 Lah 745 : 138 Ind Cas 758 (SB), *Thakardas v. Emperor*.
2. ('43) 30 AIR 1943 Nag 97 (98) : I L R (1943) Nag 520 : 204 Ind Cas 94, *In re Narayandas Nathuram*.
3. ('47) 34 AIR 1947 Lah 319 (319) : *Harjimal & Sons v. H. S. Palta & Sons*. (Plaintiff producing along with his plaint unstamped document—Court calling upon each party



Thus, where a claim is based on a particular entry in an account book and the whole account book containing also entries which are *not the basis of the claim* is produced the Judge is not entitled to impound the latter, as the latter cannot be said to be produced or come before the Judge in the performance of his functions.<sup>3</sup> When the account book is sent to the Collector under S. 38, even the Collector has no power under this section to impound the entries not impounded by the Court except in the case of account books produced before him in connection with income-tax inquiries.<sup>3a</sup> Similarly, where a witness summoned to produce a document produces it along with others not connected with the case before the Court the latter cannot be impounded.<sup>4</sup>

A Court has no power to impound a document after the case has been disposed of and it has become *functus officio*.<sup>5</sup> This principle also applies to the other persons mentioned in the section.<sup>5a</sup> Thus, where a document which is not duly stamped has been registered and returned to the party it is not subsequently open to the Registrar to send for the deed and impound it.<sup>5b</sup>

When an instrument has been admitted in evidence and judgment delivered, the Court becomes *functus officio* and it is not, therefore, open to the Court to reopen the matter and impound the document.<sup>6</sup> A sale certificate granted to the purchaser by the Court had only a four anna stamp though it should have borne a stamp of eight annas. A copy of the certificate was sent to the Sub-Registrar who informed the Judge that it was insufficiently stamped. The Judge got the certificate back from the purchaser and impounded it. It was held that when the certificate was

to admit or deny documents produced in Court by the other party—Defendant admitting document subject to objection as to stamp—Court calling upon plaintiff to pay duty and penalty and on his refusal impounding documents—*Held* that the production of document by the plaintiff did not amount to tender of that document in evidence and as the plaintiff was not responsible for payment of duty under S. 29 (c) he could not be called upon to pay the deficiency. The Court however observed that it may be open to the court in case the plaintiff do not tender the document or seek to use it as evidence, to impound the document under S. 33 and call upon the defendant to make good the deficiency and to pay penalty but the Court did not express its final opinion on the point.)

3. ('36) 23 AIR 1936 Lah 985 (986): 163 Ind Cas 560, *Ujjal Singh Sunder Singh v. Ahmad Yar Khan*. (*Held*, the mere production of a copy of a document without an attempt to prove it or without an attempt to tender it formally in evidence does not amount to the production of the document, nor does the document under such circumstances come before the person concerned in the performance of his functions within the meaning of S. 33 of the Stamp Act. Where, therefore, transliteration of documents are merely filed with the plaint to be used in case of necessity and this necessity does not arise, the Court is not competent to impound them and to direct the payment

- of duty and penalty under that section.) ('06) 1906 Pun L R No. 131, p. 428 (431) (FB), *Jai Devi v. Gokalchand*. ('18) 5 AIR 1918 Cal 1026 (1027): 35 Ind Cas 415 (DB), *Sashishi Mohan v. Kumud Kumar Biswas*. (Suit based on one hatchitta—Bound book containing several hatchittas produced.) ('31) Beng S M Vol. I. p. 36. (Citing, Board's File No. 68 of 1908.) ('40) Bihar S M p. 120. (Do.) 3a. ('33) Mad S M p. 38-39. (Citing, B. Ps. 402, 25th August 1895; 647—R, Mis., 9th August 1920.) 4. ('43) 30 AIR 1943 Nag 97 (98): ILR (1943) Nag 520: 204 Ind Cas 94, *In re Narayandas Nathuram*. 5. ('47) 34 AIR 1947 Pat 443 (444): 26 Pat 337 (DB), *Inderman Mahton v. Thakur Mahton*. ('42) 29 AIR 1942 Lah 257 (260): 202 Ind Cas 670 (SB), *Puranchand v. Emperor*. ('06) 1906 Pun L R No. 131, p. 428 (431) (FB), *Jai Devi v. Gokalchand*. 5a. ('32) 19 AIR 1932 Lah 495 (498): 13 Lah 745: 138 Ind Cas 758 (SB), *Thakardas v. Emperor*. 5b. ('32) 19 AIR 1932 Lah 495 (498): 13 Lah 745: 138 Ind Cas 758 (SB), *Thakurdas v. Emperor*. 6. ('49) 36 AIR 1949 Nag 214 (215): ILR (1948) Nag 950, *Paiku Kashinath v. Gaya*. (Action under S. 61 of the Act is the only course left in such a case.) ('37) 24 AIR 1937 Mad 763 (764): 174 Ind Cas 20, *Panakalarao v. Kumaraswami*.



signed and handed over to the purchaser the Court became *functus officio* and could not impound the document when it was presented to him again.<sup>7</sup>

Until the Judge signs a sale certificate there is no "instrument" within the meaning of S. 2 (14) and so when the sale certificate is placed before the Judge for signature for the first time it is not an instrument coming before him in the performance of his functions and so cannot be impounded under this section.<sup>7a</sup>

The word "produce" means produced in the ordinary course of law and not *produced under compulsion*.<sup>8</sup> Hence, the mere production of a document in compliance with an illegal demand will not confer authority to impound.<sup>9</sup> Where, however, on receiving the complaint against a person for having committed offences under Ss. 64 (c) and 68 (c) of this Act a Magistrate issues a search warrant under which a number of insufficiently stamped documents are seized, the Magistrate can impound them as the word "come" in this section is sufficiently wide to include the production of documents under a search warrant.<sup>10</sup>

When a Court orders a document to be returned because it is not proved it can no longer be considered to be part of the judicial record and cannot therefore properly come before the Court again in the performance of its functions, unless, of course by any chance the order is reviewed and the document is allowed to be tendered again in evidence. But otherwise, it would remain in the custody of the Court after such order only for being returned to the party concerned.<sup>11</sup>

If a Court which has no jurisdiction to impound a document, impounds it and sends it to the Collector as provided in S. 38 (1), the document does not come either before the Collector or the higher Revenue-authorities in the exercise of their functions and consequently they are not competent to impound it.<sup>12</sup>

A copy of an entry not properly stamped was attached to a plaint and the suit was compromised at the first hearing and the original entry was never produced or came before the Court. It was held that action under S. 33 could not be taken in respect of the copy of the entry as the *original entry* was not produced or came before the Court.<sup>13</sup>

A Collector, in pursuance of directions to curtail activities of money lenders lending money at exorbitant rates of interest instructed a Tahsildar to make certain inquiries. The Tahsildar thereupon summoned certain money lenders to produce

7. ('30) 17 AIR 1930 Bom 392 (393): 128 Ind Cas 31 (FB), *Collector, Ahmednagar v. Rambhau*.

7a. ('30) 17 AIR 1930 Bom 392 (394): 128 Ind Cas 31 (FB), *Collector, Ahmednagar v. Rambhau*.

8. ('42) 29 AIR 1942 Lah 265 (266): 203 Ind Cas 7, *Uttamchand v. Perma Nand*.

9. ('42) 29 AIR 1942 Lah 265 (266): 203 Ind Cas 7, *Uttamchand v. Perma Nand*. (A document is produced by a party only when it is sought to be proved and a witness is examined in respect thereof and not earlier. It is highly improper for a Court to compel a party to produce an original document with a view to impound the document, because the Court has been informed that it is not sufficiently stamped. It is open to the party's counsel to refuse to obey the order of the Court in this respect.)

(32) 19 AIR 1932 Lah 495 (498): 13 Lah 745: 138 Ind Cas 758 (SB), *Thakardas v.*

*Emperor*.

10. ('02) 25 Mad 525 (528): 2 Weir 670, *King-Emperor v. Balu Kuppayyan*.

11. ('42) 29 AIR 1942 Lah 257 (260): 202 Ind Cas 670 (SB), *Puranchand v. Emperor*.

12. ('42) 29 AIR 1942 Lah 257 (260): 202 Ind Cas 670 (SB), *Puranchand v. Emperor*.

(42) 29 AIR 1942 Lah 265 (267): 203 Ind Cas 7, — *Uttamchand v. Perma Nand*. (AIR 1942 Lah 257 (SB), relied on.)

[See also ('41) 28 AIR 1941 Lah 65 (66): ILR (1940) Lah 628: 193 Ind Cas 368 (SB), *Nandlal v. Emperor*. (Quere:—When the Civil Court has collected the deficiency and penalty and the Collector on an application to him for refund of the penalty has called for the original instrument from the Court, whether the Collector in so acting caused the instrument to come before him in the performance of his functions.)]

13. ('34) 21 AIR 1934 Lah 637 (637): 151 Ind Cas 708 (SB), *Munshiram v. Harnamsingh*



their *chittas*. On their production, the Tahsildar impounded them as they were insufficiently stamped. It was held that the documents could not be said to be produced before the Tahsildar in the performance of his functions and hence he had no power to impound them.<sup>14</sup>

When a Court has collected the deficiency in stamp duty and penalty and has admitted a document in evidence under Proviso (a) to S. 35 and was granted a certificate under S. 42 (1) it is not open to the Collector, on the document being subsequently produced before him, to impound it under S. 33 (1).<sup>15</sup>

Where a document is brought under S. 31 before a Collector for adjudication as to proper stamp duty after the period of one month prescribed by S. 32 (3), proviso (a), the collector has to impound the document under this section if he is of opinion that it is not duly stamped.<sup>16</sup>

**5. "Duly stamped."**—The words "duly stamped" are defined in S. 2 (11) of this Act. According to that definition an instrument is duly stamped when it bears an adhesive or impressed stamp of not less than the proper amount and such stamp has been affixed or used in accordance with the law for the time being in force in British India.

In the East Bengal the definition of the words "duly stamped" has been modified in certain respects by S. 3 of the Indian Stamp (East Bengal Amendment) Act, 1949. For full text of that Act, see under S. 2 (11).

The duty chargeable on an instrument must be decided with reference to the Act in force at the date of the execution of the document.<sup>1</sup> (See section 2 (6).)

See also section 3, Note 12.

**6. "Impound."**—"Impound" is not defined in this Act. According to the *Oxford Dictionary* it means "to take legal or formal possession of"; according to Webster, "to shut up and place in a pound; hence to seize and hold in the custody of the law"; according to Wharton's *Law Lexicon*, "to place a suspected document in the custody of the law."

A document is, therefore, considered to be impounded not when the oral order is given but *when it is actually taken into custody* by an officer of the Court in pursuance of its order.<sup>1</sup> In the case of a document which is already in the possession of the Court as part of the record, the impounding takes place when the word "impounded" is endorsed on the document and the signature of the presiding officer is affixed to the endorsement so as to show that the nature of the custody of the document has changed and that it is to be treated thereafter as an "impounded" document.<sup>2</sup>

14. ('45) 32 AIR 1945 Pat 96 (97): 23 Pat 351 (355): 218 Ind Cas 79 (SB), *In re Payanda Khan*.

15. ('41) 28 AIR 1941 Lah 65 (68): ILR (1940) Lah 628: 193 Ind Cas 368 (SB), *Nandlal v. Emperor*.

'46) 33 AIR 1946 Mad 437 (440): ILR (1947) Mad 141: 227 Ind Cas 360 (DB), *Sethuraman v. Ramanathan*.

#### Section 33—NOTE 5

1. ('85) 1885 Pun Re No. 7 (Rev) p. 10 (10), *In the matter of application of Devi Ditta Mal*. ('81) 3 Mad 251 (253) (DB), *Narayanan Chetti v. Karuppathan*.

('82) 5 Mad 394 (396): 7 Ind Jur 16 (FB), *Reference under Stamp Act, S. 46*.

(1877) 3 Q B D 170 (173): 47 L J Q B 147: 37 L T 633: 26 W R (Eng) 112, *Clarke v. Roche*.

#### Section 33—NOTE 6

1. ('42) 29 AIR 1942 Lah 257 (260): 202 Ind Cas 670 (SB), *Puranchand v. Emperor*.

2. ('42) 29 AIR 1942 Lah 257 (260): 202 Ind Cas 670 (SB), *Puranchand v. Emperor*. (The "impounding" of a document should be held to take place not when a verbal order is given by the Court but when it is carried out, that is, when the document is taken into custody by the Court, and an endorsement is made thereon. Consequently, if a Court, intending to impound Ex. A signs an endorsement of impounding on the back of Ex. B, the oral direction of the Court to impound Ex. A signs an endorsement of impounding on the back of Ex. B, the oral direction of the Court to impound Ex. A cannot be held to be a due impounding of that exhibit.)



**7. Objection by Court or officer suo motu.**—The words “every such person shall examine every instrument so chargeable” in sub-s. (2) are imperative and cast a duty on the officer before whom the document is produced to examine it in order to ascertain whether it is duly stamped. Hence, even if a party takes no objection to the insufficiency of stamp or withdraws such objection, the Court or officer before whom the document is produced is bound *suo motu* to raise such objection and to impound the document if not duly stamped.<sup>1</sup>

**8. Counsel's duty as regards stamp objections.**—The provisions of the stamp law by which unstamped or insufficiently stamped documents are excluded are primarily in the interests of the Government revenue. It is perfectly immaterial as between the parties to a suit whether a certain document does or does not bear a certain mark which goes to show that the Government dues had been paid. The only thing which is necessary to be seen as between them is whether the document is genuine or not.<sup>1</sup> It is thus no duty of a counsel to raise objections as to stamps. It is for the Court to take notice of the absence of necessary stamps.

According to the rules laid down by the General Council of the English Bar, it is considered to be unprofessional conduct for a counsel to raise objections to the admissibility of a document on the ground that it is not stamped. But there is no such objection to counsel raising an objection to the validity of a document which by law is rendered *invalid* owing to the absence of stamps. The Court generally looks with disfavour upon an objection taken merely on account of the absence of stamps and may deprive the objector of costs.<sup>2</sup>

**9. Arbitration proceedings—Objection as to stamp in.**—Arbitrators are persons having by the consent of the parties authority to receive evidence.<sup>1</sup> Hence, even though the parties do not take the objection as to stamp, the arbitrators are bound to take notice of any omission or insufficiency in the stamping of any document produced before them. They are also to require under Proviso (a) to S. 35 of this Act, before they receive in evidence or act under the submission, the payment of the necessary duties and penalties.<sup>2</sup>

**10. Proviso (a).**—A Magistrate or Judge of a Criminal Court, unlike the public officers referred to in sub-s. (1) of this section, is not bound to examine or impound any instrument coming before him in the course of any proceeding except a proceeding under Chap. XII (Disputes as to immovable property) or Chap. XXXVI (the maintenance of wives and children) of the Criminal Procedure Code. It is *optional* to him to examine or impound the document if he thinks fit so to do.<sup>1</sup>

Similarly, the prohibition, contained in the first part of S. 35 that no instrument chargeable with any duty shall be admitted in evidence for any purpose or acted upon unless it is duly stamped, does not apply to Criminal Courts except in regard to proceedings under Chap. XII or XXXVI of the Criminal Procedure Code. See S. 35, Proviso (d).

**11. High Court.**—Under sub-s. 2 (b) of this section, in the case of a Judge of a High Court, the duty of examining and impounding instruments may be delegated to such officer as the Court appoints in this behalf. Thus the Lahore High Court has

#### Section 33—NOTE 7

1. ('25) 12 AIR 1925 Lah 552 (554) : 91 Ind Cas 772, *Guranditta Mal v. Gurdasmal*.

#### Section 33—NOTE 8

1. ('71) 16 Suth W R 6 (7) (DB), *Enayetoollah v. Shaikh Meajan*.  
(30) 17 AIR 1930 Cal 577 (577) : 128 Ind Cas 187 (DB), *Nirode Basini v. Sital Chandra*.
2. ('37) 24 AIR 1937 Cal 765 (767) : ILR

(1937) 1 Cal 257 : 173 Ind Cas 263, *Gulzarilal Marwari v. Ramgopal*.

#### Section 33—NOTE 9

1. ('32) 19 AIR 1932 Lah 495 (497) : 13 Lah 745 : 138 Ind Cas 758 (SB), *Thakardas v. Emperor*.
2. ('09) 1 Ind Cas 371 (374) (Cal), *Hurdwary Mull v. Ahmed Musaji Selaji*.



delegated the duty of examining and impounding instruments of the Deputy Registrar.<sup>1</sup>

Where the matter has come before the High Court under this section and the High Court has not delegated its power of examining and impounding documents to any officer of the Court, the High Court under this section is entitled to see if the document is properly stamped and to impound it if not duly stamped.<sup>2</sup>

**12. Revision against order as to impounding.**—In *Ma Thin Za v. Veera Kalai*<sup>1</sup> it was held that an order impounding a document should be considered as an interlocutory order and the High Court would interfere in revision if irreparable damage would otherwise be caused.

In *Uttam Chand v. Permanand*,<sup>2</sup> however, it was held by the Lahore High Court that an order impounding a document and forwarding it to the Collector for necessary action under the Stamp Act is a “case decided” within the meaning of S. 115 of the Civil Procedure Code and is open to revision under that section. It was further held that the fact that proceedings are being taken in the Court of the Collector pursuant to the order made by the Civil Court forwarding the document to him cannot deprive the High Court of the jurisdiction to go into the matter.

Where a court reopens a case after it has become *functus officio* and passes an order impounding a document it acts without jurisdiction and the High Court would have jurisdiction to set aside the order in revision.<sup>3</sup>

**13. Appellate Court, power of.**—As to the power of the appellate Court to impound a document which has been admitted by the lower Court, see Notes on S. 36.

**34. Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.**

**\*35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :**

Provided that—

- (a) any such instrument not being an instrument chargeable with a duty of one anna <sup>a</sup>[or half an anna] only, or a bill of exchange or promissory note shall subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

#### Section 33—NOTE 10

1. ('16) 3 AIR 1916 Cal 310 (311) : 29 Ind Cas 671 (DB), *Jagannath v. Deoki Nandan*.

#### NOTE 11

1. ('34) Pun S M Part I-B Chap. 3, page 12.
2. ('35) 22 AIR 1935 Cal 610 (611) : 63 Cal 173 : 158 Ind Cas 406 (DB), *Dhirendro Nath Poddar v. Hemangini Dasi*.

#### Section 33—NOTE 12

1. ('31) 18 AIR 1931 Rang 193 (194) : 131 Ind Cas 503.
2. ('42) 29 AIR 1942 Lah 265 (266) : 203 Ind Cas 7.
- (49) 36 AIR 1949 Nag 214 (215) : ILR (1948) Nag 950, *Paiku Kashinath v. Gaya*.



- (b) where any person from whom a stamp receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it ;
  - (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters, and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped ;
  - (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 ;
  - (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of <sup>b</sup>[the Crown], or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.
- a. *Inserted by S. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).*
  - b. *Substituted for the words "the Government" by A. O.*

### Provincial Amendments.

#### BOMBAY

In Proviso (a) to S. 35 before the words "one anna" *insert* the words "two annas." Central Provinces and Berar. — *Bombay Act II of 1932, Pt. IV, S. 15 (2).* [1-4-1932.]

In clause (a) of the proviso to S. 35 *substitute* the words "a receipt" for the words "an instrument chargeable with a duty of one anna or half anna only or."  
— *C. P. and Berar Act V of 1948, S. 2* [30-1-1948.]

#### EAST BENGAL

For modification in the interpretation of the words "duly stamped", see the Indian stamp (East Bengal Amendment) Act, 1949, the text of which is given under 2. (11).

#### MADRAS

In clause (a) of the proviso to section 35,

- (i) before the words "one anna" *insert* the words "one and a half annas" ;

— *Madras Act XVI of 1943, S. 4 (c).* [1-10-1943.]

- (ii) after the words "half an anna only" *insert* the following, namely—

"or a mortgage of crop (Art. 34 (a) of Sch. IA) chargeable under clauses (aa) or (bb) of section 3 with a duty of four annas."

— *Madras Acts VI of 1922, S. 12* [25-4-1922] *and XVI of 1943, S. 4 (c).* [1-10-1943.]

#### SIND

Same as that of Bombay. — *Sind Act I of 1938, S. 2.* [31-3-1938.]

#### UNITED PROVINCES

In clause (a) of the proviso to S. 35, for the words "an instrument chargeable with a duty of one anna or half an anna only" *substitute* the words "a receipt".

— *U. P. Act XVIII of 1938, S. 3A.* [13-2-1939.]

\*[1879—S. 34 para. 1 and Prov. 1 and 2 ; 1869—Ss. 18, 19, 20, 28 and Sch. II, Art. 11 ; 1862—Ss. 14, 15, 17, 22 and Sch. A, Art. I ; 1860—Ss. 12, 13, Cf. (1870) 33 & 34 Vict., C. 97—Ss. 16 (1), 17, 54 (1) ; (1891) 54 & 55 Vict., C. 39—Ss. 14, 15.]



## RELEVANT REFERENCE TO OTHER ACT.

For modifications of the provisions of S. 35 in respect of instruments to which the Indian (Specified Instruments) Stamp Act, 1924 (XIII of 1924) applies, see S. 3 of that Act reproduced in Appendix J.

## Synopsis

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| <ol style="list-style-type: none"> <li>1. "Instrument chargeable with duty."</li> <li>2. Applicability of section to documents executed before this Act.</li> <li>3. "Is duly stamped."</li> <li>4. Act applicable to determination of duty.</li> <li>5. Due stamping—Onus of proof.</li> <li>6. Stamp objection—Duty of Court.</li> <li>7. Document not duly stamped—Effect—General.</li> <li>8. "For any purpose."</li> <li>9. Refreshing memory.</li> <li>10. Cross-examination.</li> <li>10a. Corroboration.</li> <li>11. "Or acted upon."</li> <li>12. Suit on original consideration.</li> <li>13. Secondary evidence.</li> <li>14. Admissibility of other evidence to prove transaction.</li> <li>14a. Admissions by defendant.</li> <li>15. Unstamped decree for partition.</li> </ol> | <ol style="list-style-type: none"> <li>16. Registration.</li> <li>17. Arbitration proceedings.</li> <li>18. Proviso (a)—General.</li> <li>19. Promissory note.</li> <li>20. Bill of exchange.</li> <li>21. Instrument chargeable with duty of one anna or half an anna.</li> <li>22. "Subject to all just exceptions."</li> <li>23. This section and S. 26. See S. 26 Note 16</li> <li>24. Proviso (b).</li> <li>25. Proviso (c).</li> <li>26. Proviso (d).</li> <li>27. Document bearing Collector's certificate—Proviso (e).</li> <li>28. Delivery of signed and stamped blank paper</li> <li>29. Power of appellate or revisional Court.</li> <li>30. Party succeeding on stamp objection—Right to costs.</li> <li>31. Recovery of stamp duty. See Notes on Ss. 29, 40, 44 and 48.</li> </ol> |
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1. "Instrument chargeable with duty."—Section 3 is the charging section under this Act and in order to determine if a document is chargeable with duty, the provisions of S. 3 must be considered in connection with the document. But this will be only with reference to documents executed after the coming into force of this Act. With regard to documents executed under prior Stamp Acts, the provisions of the respective Acts will have to be applied.<sup>1</sup> (See S. 2 (6).)

For instances of documents not chargeable with duty see the cases noted below.<sup>2</sup>

See also Notes on S. 2 (6) and S. 3.

2. **Applicability of section to documents executed before this Act.**—In the case of documents executed while prior Acts were in force, the question as to whether

## Section 35—NOTE 1

1. See ('85) 1885 Pun Re (Rev.) No. 7, page 10 (10), *In the matter of application of Devi Ditta Mal*. (Under the provisions of the Stamp Act of 1879 the duty chargeable on an insufficiently stamped document must be decided with reference to the Act in force at the date of the execution of the document, but the penalty leviable is determined in all cases by the Act of 1879.)
  2. ('75) 23 Suth W R 325 (326) (DB), *Situl Persad v. Monohur Doss*. (A letter containing an admission does not require a stamp before it can be admitted as evidence.)
- (1830) 172 E R 719 (719) : 4 C & P 312 (312), *Doe d. Lambourn v. Pedgriph*. (A draft agreement had on the back of it the following memorandum, "We approve of this draft." And this was signed by the parties—Held that it did not require any stamp.)

(1828) 172 E R 499 (499) : 3 C & P 456 (456) *Hill v. Johnson*. (In assumption, by the endorsee against the drawer of a bill of exchange, the defence was that time had been given to the acceptor. To meet this defence, a copy of a paper that the defendant had promised to sign, was offered in evidence. By this the defendant consented to the plaintiff's using any means to obtain payment from the acceptor without prejudice of his right to recover from the drawer—Held that this paper did not require a stamp.)

[See also ('21) 8 AIR 1921 Mad 71 (71, 72), *Venkatachalapathi Chettiar v. Lakshmanan Chettiar*. (External evidence is admissible to show that an unstamped acknowledgment was not signed to supply evidence of the debt connected with it.)

('36) 23 AIR 1936 Nag 225 (226) : 167 Ind Cas 673 (DB), *Ananda Namdeo v. Pundlik Tukaram*. (Instrument is a document which affects any right or liability.)]



they are duly stamped must be decided with reference to the prior Acts.<sup>1</sup> Where it is found not to be duly stamped according to the old enactments the question of admissibility in evidence will, however, fall to be decided under this section.<sup>2</sup>

3. **"Is duly stamped."**—The expression "duly stamped" has been defined in S. 2 (11) and the commentary on that sub-section may be referred to.

There are three chief points to be considered in determining whether an instrument (which is stamped) is "duly stamped".<sup>1</sup> These are—

- (1) whether the stamp is of the required *amount* ;
- (2) whether the stamp is of the required description, adhesive, impressed, etc. (See S. 10.) ;
- (3) whether the stamp has been affixed or used in the authorised manner.

For instance, S. 12 requires that adhesive stamps must be cancelled and that otherwise the document will be considered as not stamped.<sup>2</sup> Similarly, under S. 17, instruments executed in British India must be stamped before or at the time of execution.<sup>3</sup>

Thus, it is not enough that *at the time when a document is tendered in evidence* it bears a stamp of the required amount and description. It is further necessary that the instrument must have been stamped at the proper time. Under the Acts prior to that of 1879 it was sufficient if a document was stamped at the time when it was offered in evidence. There was no provision requiring it to be stamped at the time

#### Section 35—NOTE 2

1. ('76) 2 Cal 58 (87, 88) (DB), *Moran v. Mittu Bibee*.

('91) 14 Mad 255 (258) (FB), *Reference under Stamp Act, S. 46*.

Also see Note 4 and S. 2 (6) Note 1.

2. ('84) 1884 All W N 328 (329) (DB), *Atmaram v. Sardar Kuar*.

('89) 13 Bom 493 (496) (DB), *Gurpadapa v. Naro Vithal Kulkarni*.

('74) 13 Beng L R (App) 33 (34) : 21 Suth W R 446 (DB), *Nandan Misser v. Chatterbati*. (Suit for recovery of money on a *Chitta* which was unstamped. The Judge refused to admit it in evidence on payment of penalty holding that he had no power under S. 28 of Act XVIII of 1869 to do so—*Held* that the document was in effect a promissory note and not a bond and therefore the Judge had no power under that section to allow it to be stamped.)

('82) 5 Mad 394 (396) : 7 Ind Jur 16 (FB), *Reference under Stamp Act, S. 46*. (The duty chargeable in respect of an instrument executed before the Act of 1879 must be decided with reference to the Act in force at the date of execution of the document, but the penalty leviable is determined in all cases by Ss. 34 and 37 of the Act of 1879 irrespective of the date of execution of the

document.)

[But see ('81) 3 Mad 251 (253) (DB), *Narayan Chetty v. Karuppathan*. (Instrument constituting promissory note under prior Act but not constituting promissory note under later Act which was in force at time of suit—*Held* it must be treated as promissory note and as absolutely inadmissible—Submitted not correct.)]

#### Section 35—NOTE 3

1. ('33) Mad S M p. 42. (Citing, Donough's Indian Stamp Act, page 349.—The expression "duly-stamped" (Section 2 (11) would seem to mean not only bearing a stamp of the proper value, but also stamped at the right time (Sections 17, 18 and 19), in the proper manner (Sections 13 and 14) with the proper description of stamp (Sections 10 and 11) under the Stamp Rules, and duly cancelled (Sections 12 and 13.))

2. ('32) Ind Rul 1932 Lah 624 (624), *Ratanlal v. Dula*. (One anna receipt stamp affixed to instrument of receipt, but not cancelled.—*Held*, instrument must be considered to have been unstamped.)

3. ('89) 13 Bom 484 (485) *Jethibai v. Ramchandra Narottam*.

('37) 24 AIR 1937 Rang 392 (394) : 1937 Rang L R 196 : 172 Ind Cas 601 (DB), *William Moses Ezekiel v. Sarah Saul Sofaer*



of execution. The law is different now.<sup>4</sup> (See Note 11 on S. 17.)

So also, in regard to the cancelling of adhesive stamps, the cancelling must be done at the time when the stamps are affixed or the document is executed. It is not enough if the stamps are cancelled subsequently.<sup>5</sup> (See Note 5 on S. 12.)

Sometimes it is said that the expression "duly stamped" refers to the time when the document is tendered in evidence.<sup>6</sup> It is submitted that this remark is apt to mislead. The expression "duly stamped" is to be taken in the sense of the definition in S. 2 (11) read with the other provisions of the Act. Such provisions clearly prescribe a *time* for the stamping of documents and unless they are complied with, the document will not be one "duly stamped."

In East Bengal, S. 3 of the Indian Stamp (East Bengal Amendment) Act, 1949 provides that when the registering officer is satisfied that impressed stamps of requisite description and value are not available from the Collecting Government, the stamp duty on instruments presented for registration, payable under this Act shall be paid to the registering Officer in cash when it is less than Rs. 100 and by Treasury Chalan when it is Rs. 100 or more, who shall endorse the payment on such instruments where upon the instrument shall be deemed to have been duly stamped within the meaning of this Act. [For full text of the Act see under S. 2 (11) ].

In determining the nature of an instrument for purposes of stamp duty, the Court must only consider the instrument as it is and should not look at extraneous circumstances.<sup>7</sup> (See S. 3, Note 12.)

Also see S. 17 Note 10.

4. ('13) 19 Ind Cas 445 (446) (DB) (All), *Abid Husain v. Asghar Husain*.

('75) 12 Bom HCR 208 (209), *Bhauram Madan Gopal v. Ramnarayan Gopal*.

('67) 3 Bom HCR (AC) 92 (93) (DB), *Atmaram v. Amirchand*.

('82) 9 Cal L Rep 272 (275) (DB), *Kalichurn Das v. Nobo Kristopal*.

('75) 24 Suth WR 198 (200) (DB), *Sree Mutty Noar Bibee v. Shaikh Rumzan*.

Also see S. 17 Note 7.

5. ('33) 20 AIR 1933 Lah 148 (149): 145 Ind Cas 154 (DB), *Khazan Shah v. Atta Ullah*.

('12) 16 Ind Cas 834 (835) (DB) (Lah), *Sundara Das v. People's Bank of India*.

('04) 2 Low Bur Rul 103 (104), *Maung Ba Kywan v. Ma Kyi Kyee*.

(1882) 7 App Cas 172 (175): 51 LJPC 50: 46 LT 435: 30 WR (Eng) 904, *Vernon Allen v. Meera Pullay*.

6. ('04) 6 Bom LR 699 (703), *Motilal v. Jagmohandas*.

7. ('25) 12 AIR 1925 Bom 527 (528): 90 Ind Cas 685 (DB), *Ramprasad v. Shrinivas*. (16 Cal 432 and 6 Bom LR 699 followed.)

('03) 27 Bom 279 (280): 5 Bom LR 28 (FB), *Sakharam v. Ramchandra*. (Local custom to vary terms of document not to be considered.)

('37) 24 AIR 1937 Rang 392 (394): 1937 Rang LR 196: 172 Ind Cas 601 (DB), *William Moses Ezakiel v. Sarah Saul Sofaer*.

(1894) 2 QB 715 (719): 64 LJQB 99: 71 LT 168: 43 WR (Eng) 22, *Royal Bank of Scotland v. Tottenham*. (Post-dated cheque stamped as cheque is admissible in evidence.)

(1877) 2 Ex D 265 (267): 46 LJQB 605: 36 LT 182: 25 WR (Eng) 305, *Gatty v. Fry*. (Post-dated cheque.)

(1871) 24 LT 130 (131): 6 QB 209: 40 LJQB 141 *Bull v. O'Sullivan*.

[See (1848) 175 ER 340 (341): 2 Car & Kir 810 (813), *Hankins v. Clutterbuck*. (If parties choose to divide their contracts so as to lessen the amount of stamps they may legally do so.)

(1827) 108 ER 596 (597, 598): 6 B & C 665 (669, 670), *King v. Inhabitants of Ridgwell*. (Whether the stamp is an appropriate stamp for the instrument depends on the legal effect of the instrument itself. Where an instrument, which, in terms, purported to be a conveyance of land, but which was not a deed, not being under seal, and therefore could not operate as such, contained a stipulation not to disturb the party intended to take the premises, in the enjoyment of them, it was held to operate as an agreement and to require a stamp appropriate to such instrument and as an agreement it was admissible in evidence.)]



It has been held that the word "is" must be liberally interpreted so as to include "has been." Consequently, it has been held that where a promissory note is duly stamped at the time of its execution the document is admissible in evidence although at the time when it is tendered in evidence, it is no longer duly stamped by reason of the loss or removal or obliteration of the stamp.<sup>8</sup>

An objection that an instrument is not duly stamped is to be given effect to although it is not sustainable on the identical grounds on which it is raised.<sup>9</sup>

*Illustrative cases.*

The following are some illustrative cases bearing on the description of stamps to be used and the manner of stamping documents :

- (1) Where an acknowledgment of a debt is stamped with a one anna postage stamp instead of a receipt stamp, it must be treated as not stamped at all.<sup>10</sup>
- (2) A demand promissory note stamped with a quarter anna postage stamp is not duly stamped.<sup>11</sup>
- (3) A Rule under the Stamp Act of 1879 provided that promissory notes chargeable with a duty of 6, 8 or 10 annas should be written on hundi paper. It was held that this did not preclude other promissory notes being written on hundi paper.<sup>12</sup>
- (4) Under the Act of 1869, it was held that an instrument written on two stamp papers without a certificate required by S. 49 could be admitted in evidence after the payment of penalty under S. 20 and not otherwise.<sup>13</sup>
- (5) Where an instrument is written on one impressed sheet but two impressed sheets are used to make up the amount of duty chargeable, the instrument is not duly stamped as it offends against S. 13 and Stamp Rules, 1925 ; Rule 7 (1).<sup>14</sup>

**Document stamped with optional stamp under S. 26 whether duly stamped.**—See Note 16 on Section 26.

[See also (1863) 1 Mad H C R 226 (228) (DB), *Chinnaiya Nattan v. Muttusvami Pillai*. (In determining the stamp to be affixed to a document, the state of things at its execution has alone to be regarded. The contract was held to be a partnership agreement.)]

Also see S. 3 Note 12 and S. 27 Note 2.

8. ('34) 21 AIR 1934 All 388 (389) : 56 All 781 : 149 Ind Cas 90, *Mt. Mewa Kunwari v. Boure*.

(1842) 3 Q B 687 (688, 689) : 12 L J Q B 36 : 114 E R 670 : 61 R R 352, *Doe d. Frayer v. Coombs*.

[See ('34) 21 AIR 1934 Rang 364 (365) : 153 Ind Cas 531, *U Kyaw v. Hari Dutt*. (Mere plea that there were two stamps one of which was lost subsequently is not enough—If plea is not proved, plaintiff must lose his suit.)]

9. ('07) 9 Bom L R 1034 (1038), *R. D. Sethna v. Mirza Mahomed*.

10. ('01) 23 All 213 (215, 216) : 1901 All W N 54 (FB), *Reference under S. 57 of Act No. II of 1899*.

11. ('17) 4 AIR 1917 Bom 223 (223) : 42 Ind Cas 947 (DB), *Venkataraman v. Shankaranarayan*.

12. ('91) 14 Mad 32 (34, 35), *Bank of Madras v. Subbarayalu*.

Also see S. 2 (11) Note 7, S. 10 Note 12 and Art. 49 Note 4.

13. ('76) 1876 Pun Re No. 26, page 42 (43) (FB), *Cheyne Sukh Dass v. Musa*.

('74) 7 Mad H C R (App) 36 (36), *Anonymous*.

14. ('14) 1 AIR 1914 Mad 358 (359) : 23 Ind Cas 110, *Mohanlal Kanailal v. Kesrimull Chordiya*.

Also see S. 2 (11) Note 9 and S. 13 Note 4. [But see ('70) 13 Suth W R 41 (43) (DB), *A. D. Dunne v. Ameeroonissa Khatoun*.]



**4. Act applicable to determination of duty.**—As explained in the Notes on S. 2 (11), the question whether an instrument is duly stamped must be determined with reference to the law in force at the time when the instrument is executed, because it is under such law that the instrument is chargeable with duty.<sup>1</sup> But the penalty leviable is to be determined according to the law in force at the time when the instrument is tendered in evidence.<sup>2</sup> Hence, the question whether an instrument falls under one description or another for purposes of stamp duty must be determined with reference to the law in force at the time of the execution of the instrument. For instance if an instrument is a promissory note according to the definition in the Act which is in force at the time of its execution it must be stamped as a promissory note although under the enactment which is in force when the instrument is sought to be admitted in evidence it may amount to a bond and not a promissory note.

But the above consideration applies only to the determination of the question whether an instrument is duly stamped.

Where an instrument is not duly stamped according to the test, and the question arises whether the instrument is a promissory note or other kind of instrument which cannot be admitted in evidence on payment of penalty under Proviso (a) to this section, the above test will not apply. This question will have to be decided with reference to the provisions of the Act in force at the time when the instrument is sought to be admitted in evidence. Thus, where an instrument is not a promissory note under this Act, it may be admitted in evidence on payment of penalty under Proviso (a) although it was a promissory note according to the definition in the Act which was in force at the time of the execution of the instrument.

The cases cited below<sup>3</sup> are opposed to this view, and it is respectfully submitted that they are not correct.

**5. Due stamping—Onus of proof.**—Prima facie, the onus of showing that a document is not duly stamped is on the party impeaching the document.<sup>1</sup>

#### Section 35—NOTE 4

1. ('67) 1867 Pun Re No. 59, page 119 (119) (DB), *Turtee v. Mukhram*.
- ('91) 14 Mad 255 (258) (FB), *Reference under Stamp Act, S. 46*. (An assignment of an interest in a will was executed by an unstamped instrument on the 26th May, 1862. It was not chargeable with stamp duty either under the Stamp Act, XXXVI of 1860 or X of 1862. Consequently, no penalty could be levied under Act I of 1879.)
- ('82) 5 Mad 394 (396) (FB), *Reference under Stamp Act, S. 46*.
- ('21) 8 AIR 1921 Pat 218 (223) : 70 Ind Cas 232 (DB), *Pratap Udainath v. G. N. Sahi*. (In the absence of any Regulation dealing with stamp duty applicable to a kabuliyat of a grant for life, no penalty can be exacted on the ground of the kabuliyat being insufficiently stamped.)
- (1877) 3 QBD 170 (173) : 47 LJQB 147 : 37 LT 633 : 26 WR (Eng) 112, *Clarke v. Roche*. (A deed, purporting to appoint a new trustee, appeared when tendered in evidence to be sufficiently stamped accord-

ing to the law in force on the day when it was dated, but it was proved to have been executed some years previously, and the stamp according to the law then in force was insufficient—*Held* on the construction of Ss. 15, 16 and 17 of the Stamp Act of 1870, that the deed could not be admitted in evidence.)

Also see Note 2.

2. See cases in foot-note (1).

3. ('81) 3 Mad 251 (253) (DB), *Narayanan Chetti v. Karuppathan*. (For a criticism of this case see Note 1 on S. 2 (6).)

('07) 9 Bom LR 1034 (1041) R. D. Sethna v. Mirza Mahomed.

Also see Note 19.

#### Section 35—NOTE 5

1. (1884) 9 PD 215 (217) : 53 LJP 88 : 33 WR (Eng) 171 : 51 LT 271, *The Belfort*.
- (1844) 152 ER 1253 (1254) : 13 LJ Ex 113 : 2 LT (OS) 285, *Wilson v. Smith*.
- (1842) 3 QB 687 (688, 689) : 12 LJQB 36 : 61 RR 352 : 114 ER 670, *Doe d. Frayer v. Coombs*.
- (1831) 109 ER 1120 (1120) : 2 B & Ad 205 (206), *King v. Inhabitants of Enderby*.



Hence, where a document properly bears adhesive stamps and the stamps are of the proper amount and the stamps are cancelled, it will be presumed that they were affixed and cancelled at the proper time.<sup>2</sup> Similarly, where a document requiring an impressed label is shown to have been stamped with such label it will be presumed until the contrary is shown that the label was attached and impressed by the proper officer according to the rules.<sup>3</sup>

Where a document is proved to have been lost or is in the possession of the opposite party who fails to produce it after notice and secondary evidence is given of the contents of the document, it will be presumed that the original was duly stamped.<sup>4</sup> (See Evidence Act, sections 89 and 114). Where the original is shown not to have been duly stamped, the secondary evidence cannot be admitted.<sup>5</sup>

Where a party refuses, after notice, to produce a document in his possession, he cannot subsequently produce that document, for the purpose of showing that the document was not duly stamped. (See Evidence Act, section 164.)

**6. Stamp objection—Duty of Court.**—The duty of rejecting an instrument, if it is unstamped, is imposed upon the Court. The duty is to be performed whether or not the counsel objects to its admission. (See also S. 33, Note 8.) The Court

2. ('37) 24 AIR 1937 Rang 392 (394): 1937 Rang L R 196: 172 Ind Cas 601 (DB), *Williams Moses Ezekiel v. Sarah Saul Sofaer*.

[See (1874) 31 L T 372 (374): 23 W R (Eng) 89, *Marc v. Rouy*. (By Ss. 24, 51 and 54 of the Stamp Act of 1870, a foreign bill in order to be admissible in evidence, requires only that the proper stamp should have been duly affixed. Although not cancelled, if the holder proves that the proper stamp was affixed before the bill came into his possession, the burden of proof that it was not duly stamped is thrown upon the person objecting to its admission.)

(1868) 18 L T 904 (904): 3 C P 286: 37 L J C P 146: 16 W R (Eng) 1128, *Bradlaugh v. De Rin*. (The holder of a bill of exchange drawn out of the United Kingdom, and having a proper adhesive stamp affixed to it according to the English Stamp Act, is not bound to prove that the stamp was so affixed at the time the bill came into his possession.)

3. ('41) 28 AIR 1941 Lah 345 (346): 196 Ind Cas 619, *Peoples' Instalment and Savings Bank Ltd. v. Gian Chand*. (Original instrument lost and secondary evidence sought to be adduced—Question as to stamp on original.)

Also see S. 2 (13) Note 1.

4. (1872) 5 H L 624 (631): 42 L J Ch 173, *Marine Investment Co. v. Havside*. (Although, upon the presumption *omnia rite esse acta*, if secondary evidence is tendered to prove the contents of an instrument, which is either lost or retained by the opposite party, after notice to produce it, the Court will presume that the original was duly stamped, unless some evidence to the contrary be given; yet where there is evi-

dence that an instrument, unstamped at its execution, continued for a considerable time after its execution unstamped, the onus is shifted, and unless evidence is produced at some time subsequently, the conclusion is that it remained unstamped.)

(1815) 171 E R 394 (394): 18 R R 744, *Crisp v. Anderson*. (Against a party who refuses (after notice) to produce an agreement, it is to be presumed that it is stamped. But the party refusing is at liberty to prove the contrary.)

5. ('13) 19 Ind Cas 445 (446) (DB) (All), *Abid Husain v. Asghar Husain*.

('82) 7 Cal 256 (259): 8 Cal L Rep 533 (DB), *Sheikh Akbar v. Sheikh Khan*. (A copy of a lost promissory note which is itself inadmissible in evidence as being insufficiently stamped, cannot be received in evidence any more than the original.)

(1848) 136 E R 1446 (1448): 18 L J C P 92, *Crowther v. Solomons*.

(1847) 63 E R 1134 (1137, 1138): 9 L T (OS) 431, *Blair v. Ormand*. (Where proof is given of the loss of a written instrument by a document which itself shows that such instrument was originally insufficiently stamped, the Court will not presume that the instrument was ever properly stamped nor admit ordinary secondary evidence of its contents. But the Court received as secondary evidence a draft of such instrument produced at the hearing, with such a stamp as the instrument itself required, as the instrument appeared to have been only lost by the party sought to be charged under the instrument, although it was not proved to have been fraudulently destroyed by him—*Bousfield v. Godfrey*, (1829) 130 E R 1122, followed.)



cannot also give effect to an agreement between the parties to waive the objection as to stamp.<sup>1</sup> See also Note 7.

**7. Document not duly stamped—Effect—General.**—An instrument not duly stamped is not *invalid*.<sup>1</sup> Such a document is only subject to the disabilities mentioned in this section, namely, that the document cannot be admitted in evidence<sup>1a</sup> or registered, or authenticated or acted upon by any public officer.

[See (1872) 42 L J Ch 173 (176, 177): 5 H L 624, *Marine Investment Co. v. Havside*. (Where there is evidence that an instrument, unstamped at its execution, continued for a considerable time after its execution unstamped, the onus is shifted, and unless evidence is produced to lead to the belief that it was stamped at some time subsequently, the conclusion is that it remained unstamped.)]

#### Section 35—NOTE 6

1. (1889) 5 T L R 382 (383), *Bowker v. Williamson*.

(1834) 40 E R 134 (136): 3 L J (NS) Ch 205: 41 R R 88, *Owen v. Thomas*.

#### Section 35—NOTE 7

1. ('82) 4 All 462 (469, 477, 478): 1882 All W N 106 (DB), *Shankarlal v. Sukhrani*. (Where a mortgagee transferred his interest in the mortgage, by means of an unstamped endorsement, to another person who subsequently purported to re-transfer it by returning the mortgage-deed to him—*Held*, by Straight, J., that the transfer by endorsement, though not stamped according to law effected a valid transfer of the mortgagee's interest, which could be re-transferred only by means of a formal deed stamped according to law; that the effect of the transfer by endorsement could not be altered by the circumstance that the return of the mortgage deed was in pursuance of an award made by arbitrators to whom the disputes between the parties had been referred; that such award could not confer on the re-transfer by return of the deed, a validity which was wanting in it, owing to the absence of a formal stamped deed of assignment and that the original mortgagee's suit to enforce the terms of the mortgage, based on his title by re-transfer, was not maintainable—*Held*, by Mahomood, J., that both the transfer by endorsement and the re-transfer by return of the document being ineffective in law, the mortgagee's rights remained as before the transfer by him, and he could sue to enforce the terms of the mortgage.)

('73) 1873 Bom P J 112 (DB), *Vinayak Lakshman v. Mahadaji Damodar*. (The distinction between the utter invalidity of a document and its mere inadmissibility in evidence is perfectly well established. Whether a

document is valid or invalid depends upon what the substantive law was at the time and place of execution. If at such time, it was, according to law, invalid there, it is and continues invalid everywhere and for all time. If, however, at such time, it was not invalid according to that law, but merely inadmissible in evidence according to the adjective law (*lex fori*) of the place of its execution it is not and does not continue so inadmissible except where and whilst such or similar law is in force, its inadmissibility, like all other matters of procedure being regulated by the *lex fori* of the place where the suit is brought in which it is sought to be used.)

\*('42) 29 AIR 1942 Cal 386 (389): 201 Ind Cas 557 (DB), *Purna Chandra v. Kalipada Roy*. (Gift-deed executed and signed by donor on plain paper as no stamp could be procured at the time. The deed was stamped after the death of the donor under the orders of the Collector and was then registered. It was argued that the deed was neither a complete nor a legally valid document when it was signed by the donor without the requisite stamp being attached to it. And as the donor died before the deed was completed there could be no acceptance during the lifetime of the donor as required by S. 122, Transfer of Property Act—*Held*, failure to stamp a document which has got to be stamped under the provisions of the Stamp Act does not affect the validity of the transaction embodied in the document.)

('37) 24 AIR 1937 Cal 765 (767): I L R (1937) 1 Cal 257: 173 Ind Cas 263, *Gulzari Lal v. Ram Gopal*. (There is a clear distinction between invalidity and inadmissibility of documents. Certain statutes render documents invalid if they are not stamped, for instance, S. 93 of the English Stamp Act. But no provision of the Indian Stamp Act has this effect.)

('26) 13 AIR 1926 Cal 877 (878): 53 Ca 515: 95 Ind Cas 483 (DB), *Joyman Bewa v. Easin Sarkar*.

[See also (1893) 2 Oh 555 (560): 62 L J Oh 795: 69 L T 421: 41 W R (Eng) 545, *Powell v. London & Provincial Bank*. (Lindley L. J.:—"No case that I know of can be cited to shew that a misstated consideration or an erroneous stamp would invalidate the deed.")]

Also see S. 3 Note 22.



Where a document is not sufficiently stamped it cannot be admitted in evidence to the extent of the subject-matter as to which the stamp duty paid is sufficient, and rejected as to the rest. The instrument can be admitted or rejected only as a whole.<sup>2</sup>

It is submitted that this principle applies even where an instrument comprises several distinct matters within the meaning of S. 5. The reason is that even in such cases, there is only one instrument and under this section an instrument can only be dealt with as a whole. See Note 8.

The decision of the Bombay High Court<sup>3</sup> that a party can abandon a part of his claim under an instrument so as to make the instrument admissible in regard to the reduced portion of the claim is, it is submitted, not correct.

The bar to the admissibility, etc., of an instrument under this section does not depend on an objection by a party. Even where an objection is withdrawn by a party, the question must be dealt with by the Court or public officer as the case may be.<sup>4</sup>

It is only the particular instrument which is chargeable with stamp duty and which is not duly stamped that is inadmissible under this section. See Note 8.

Though the validity of an instrument is not affected by its not being duly stamped, persons taking transfers of property are entitled to insist that the title deeds must all be duly stamped.<sup>5</sup>

1a. ('46) 33 AIR 1946 Mad 457 (458) : 227 Ind Cas 374, *Subbiah Pillai v. Muthathal Achi*. (Mortgages evidenced by unstamped documents suppressed by defendant—Still prohibition in S. 35 will come into play.)

('26) 13 AIR 1926 All 359 (359) : 48 All 332 : 93 Ind Cas 63, *Chotey Lal v. Girraj Kishore*. (Unstamped document, unless it is admissible under some special provision of law, is mere waste paper for the purpose of judicial proceedings.)

('11) 35 Bom 29 (33) : 7 Ind Cas 955 (DB), *Rustomji v. Vinayak Gangadhar*.

2. ('72) 14 Moo Ind App 24 (38) : 15 Suth W R 32 (PO), *Mantappa v. Baswantrao*.

Also see S. 26 Note 12.

3. ('80) 4 Bom 19 (20) : 4 Ind Jur 413 (SB), *Chimnaji v. Ranu*.

4. ('25) 12 AIR 1925 Lah 552 (554) : 91 Ind Cas 772, *Gurandittamal v. Firm Gurdasmal Ramchand*.

[See also ('37) 24 AIR 1937 Cal 765 (766, 767) : I L R (1937) 1 Cal 257 : 173 Ind Cas 263, *Gulzarilal v. Ram Gopal*. (It is for the Court to take notice of absence of necessary stamps.)]

5. See (1903) 2 K B 121 (129, 130) : 72 L J K B 681 : 88 L T 676 : 52 W R (Eng) 117, *Maynard v. Consolidated Kent Collieries Corporation*. (A transfer to the plaintiff of shares in the defendant company was presented for registration. The stamp on the transfer was in accordance with the consideration stated on the face of it, but it was discovered that the consideration so stated was less than that which had been given. The directors therefore refused to register the transfer. In an action for damages arising out of this refusal, held that since a transfer not duly stamped

according to law would not, by reason of S. 14 (4) of Stamp Act 1891, be available in a Court of law either to enforce rights of the company against the transferee, or to justify an alteration of the register of shareholders, the directors were entitled to refuse to register the transfer, and that in determining whether the transfer was stamped they were entitled to go behind that which appeared on the face of document : *Whiting To Loomes*, (1881) 17 Ch D 10, followed.)

(1898) 79 L T 66 (67), *Coleman v. Coleman*. (Vendee entitled to ask vendor to stamp unstamped agreement of lease subject to which he has purchased the property.)

(1883) 24 Ch D 119 (125) : 52 L J Ch 777 : 49 L T 265 : 31 W R (Eng) 716, *Ex parte Birkbeck Freehold Land Society*.

(1881) 17 Ch D 10 (11) : 50 L J Ch 463 : 44 L T 721 : 29 W R (Eng) 435, *Whiting To Loomes*. (Lush L. J.—A purchaser is entitled to have every deed forming a step in his title in such a shape that he can, if he needs it, give it in evidence. A mortgage-deed was insufficiently stamped with a 10s stamp. The mortgagor made a contract for sale with one B and it was agreed that the mortgagee should join in the conveyance. The purchaser claimed that the deed should be stamped with full duty—Held, that a purchaser is entitled on a contract for sale with a mortgagor, to require the mortgage-deed, which is insufficiently stamped, to be stamped before completion to the full *ad valorem* duty at the vendor's expense, notwithstanding that the mortgagee may have consented to join in the conveyance : "As long as the mortgage deed is not properly



An unstamped instrument may be a "valuable security" within the meaning of S. 477, Penal Code.<sup>6</sup>

### 8. "For any purpose."

#### English Law.

*Law before 1870*—Under all the repealed Stamp Acts, from (1835) 5 & 6 Will & M., c. 21, S. 11, to (1870) 33 & 34 Vict., c. 97, S. 17 the relevant words had been "be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity"; and by a long chain of decided cases it had become settled law that an unstamped instrument was admissible for a collateral purpose. (See Chitty's Statutes, 6th Edn., 1913, Vol. 14, page 369 foot-note (z).)

The following are instances:

An unstamped promissory note was admissible to show that it had been signed by a man when in a state of intoxication.<sup>1</sup>

A presented a petition against B impeaching B's return as a member of the House of Commons, on the ground of bribery. A entered into an agreement in consideration of a sum of money and upon other terms, to proceed no further with the petition. It was held that the written agreement though unstamped was admissible in evidence, for the purpose of showing the illegality of the transaction, in answer to an action for the sum agreed to be paid.<sup>2</sup>

Where the object of the evidence was not to enforce or set up the instrument as valid but merely to show that it was part of a scheme of fraud, and so to use it for a purpose collateral to the object apparent upon the face of it, the written instrument, requiring to be stamped, but unstamped, was held admissible.<sup>3</sup>

In a suit to recover a certain debt, the defendant pleaded that he had never been indebted to the plaintiff, and in the alternative, payment. Plaintiff tendered in evidence a document purporting that the defendant admitted the debt, but that it had been paid by a bill of exchange. It was held that the unstamped bill was admissible in evidence for the plaintiff to negative the alleged payment.<sup>4</sup>

In *Matheson v. Ross*<sup>5</sup> where a paper purported to be a receipt requiring a stamp, and also an agreed statement of accounts, which did not require a stamp, it was held that it might be given in evidence to show the agreed state of accounts only, though it had not been previously stamped.

In *Evans v. Prothero*<sup>6</sup> it was held that a document containing all the requisites to make it a valid contract and purporting to be a receipt though inadmissible as a receipt by reason of its being insufficiently stamped, might be received as evidence of the contract.

stamped the purchaser cannot use it for any purpose whether to defend his title or attack a wrong doer.")

6. ('89) 12 Mad 148 (150): 1 Weir 533 (DB), *Queen-Empress v. Ramasami*.

#### Section 35—NOTE 8

1. (1813) 170 E R 1443 (1443): 3 Camp 454 (454), *Gregory v. Fraser*.

2. (1838) 150 E R 1468 (1470): 8 L J (NS) Ex 9: 51 R R 627, *Coppock v. Bower*.

[See also (1803) 170 E R 749 (750): 5 Esp 92 (95), *Dover v. Maestaer*. (A promissory note given by a voter who has been bribed, for repayment of the sum given to him, in order to secure his vote in an "action of debt" on 2 Geo. III, c. 24, against bribery at elections, may be given in evidence, though not stamped, to prove the fact of bribery.)]

3. (1846) 9 Q B 824 (839, 840): 16 L J Q B 121: 115 E R 1491, (1497), *Reg v. Compertz*. [See also (1852) 7 Ex 802 (807, 808): 21 L J Ex 312: 19 L T (OS) 159: 86 R R 838 (841, 842), *Holmes v. Sixsmith*. (A document, which purports to be an agreement, and is valid upon the face of it, but which is tendered in evidence to show the transaction with which it is connected to be fraud, is admissible though unstamped.)]

4. (1844) 64 R R 885 (888, 889): 13 L J (NS) O P 79: 2 L T (OS) 310: 134 E R 1161, *Smart v. Nokes*.

5. (1849) 9 E R 1101 (1107): 2 H L O 286: 14 L T (OS) 81.

6. (1852) 91 R R 175 (177): 42 E R 674: 21 L J Ch 772: 19 L T (OS) 117, (Reversing *Evans v. Prothero*, (1850) 20 L J Ch 448.)



Where a deed contained assent of creditors and power-of-attorney requiring stamp, it was held that the assent might be looked at, and the rest rejected.<sup>7</sup>

A deed of composition, when tendered in evidence to prove the act of bankruptcy was held admissible, although unstamped.<sup>8</sup>

But it was held that an unstamped promissory note could not be admitted in evidence to prove the promise itself as such a purpose is a direct and not a collateral one.<sup>8a</sup>

It was held that an insufficiently stamped bill of exchange could not be looked at to prove an endorsement to the bill.<sup>9</sup>

See also the undermentioned case.<sup>9a</sup>

*Law under the Act of 1870*—In the Act of 1870 also, S. 17 contained a provision similar to the one existing before 1870. The only exception was as to a promissory note or bill of exchange. An unstamped promissory note or bill of exchange was not available "for any purpose whatever." (See S. 54). In *Ashling v. Boon*,<sup>10</sup> decided under S. 54 (1) of the Act of 1870 (now repealed by S. 38 (1) of the Stamp Act of 1891), it was held that an unstamped promissory note was admissible to prove something collateral to the document itself. But the receipt of money was not a matter collateral to the document itself.

*Law under the Act of 1891*—Section 14 (1) of the Act of 1891 corresponds to this section and contains the expression "for any purpose whatever." The decisions under this Act are conflicting. Thus in *Mason v. Motor Traction Co.*,<sup>11</sup> X company entered into an agreement with Y company to sell its undertaking. The agreement was unstamped. It was held that the Court could look at a copy of the document not as an agreement but as deed evidencing the terms upon which X company proposed to sell.

But in *Fengl v. Fengl*<sup>12</sup> during the hearing of a summons alleging desertion by the husband of his wife an unstamped separation agreement was tendered in evidence on behalf of husband. It was held that under the present law, an unstamped instru-

7. (1867) 2 O P 488 (490): 36 L J O P 194 16 L T 287: 15 W R (Eng) 744, *Rutty v. Benthall*.

8. (1868) 3 C P 167 (172): 37 L J C P 113: 17 L T 511: 16 W R (Eng) 363, *Ponsford v. Walton*.

[See also (1868) 4 Ch App 47 (49): 38 L J Bcy 13: 19 L T 272: 17 W R (Eng) 40, *Re Gouldwell*; *Ex parte Squire*. (An unstamped document cannot be received in evidence for the purpose of giving it effect or supporting any claim under it; yet it is admissible to show that the grantor has committed an act of bankruptcy.)]

8a. (1860) 128 R R 308 (313): 3 L T (NS) 799, *Parmiter v. Parmiter*.

[See also (1838) 51 R R 452 (455): 150 E R 1331: 7 L J Ex 216, *Jones v. Ryder*. (A promissory note if improperly stamped, cannot be used as an acknowledgment or for any purpose.)]

(1828) 108 E R 856 (856): 7 B & O 625 (626), *Turner v. Power*. (A had granted a lease of a land to B. This lease was in writing but not stamped. A afterwards granted an oral lease to C of the same premises on

the same terms as the lease of B. In a suit against C, the lease between A and B was produced—*Held*, as the lease was not stamped it could not be received in evidence.)]

9. (1831) 109 E R 933 (936): 9 L J (OS) K B 129, *Jardine v. Payne*.

9a. (1827) 108 E R 720 (721, 722): 7 B & O 261 (264, 265), *Reed v. Deere*. (Where a party declared upon two agreements, by the second of which variations were made in the first, and there were also counts upon each separately, and it appeared, when the instruments were produced in evidence by the plaintiff that the first only was stamped. *Held*, that the second could not be read in evidence to support the plaintiff's case, but might be looked at in order to ascertain whether the first was altered by it, and that therefore, the plaintiff could not exclude the second agreement and proceed upon the counts setting out the first only.)

10. (1891) 1 Ch 568 (574): 60 L J Ch 306: 64 L T 193: 39 W R (Eng) 298.

11. (1905) 1 Ch 419 (425): 74 L J Ch 273: 92 L T 234.

12. (1914) 112 L T 173 (174): 1914 P 274 (276).



ment was not admissible in evidence for any purpose whatever including a collateral purpose and further that the tendering of the document in question was for the purpose of proving something more than a collateral issue.

According to Chitty's Statutes, 6th Edn., 1913, Vol. 14, p. 369 foot-note (z), the words "for any purpose whatever" are, notwithstanding the view (apparently to the contrary) of Kekewich J. in *Ashling v. Boon*<sup>12a</sup> decided on somewhat similar words in S. 54 (1) of the Act of 1870, now replaced by S. 38 (1), intentionally inserted to alter the law as there laid down (namely, that it was admissible for collateral purpose).

#### Indian Law.

The words "for any purpose" were inserted for the first time in the Stamp Act of 1879.<sup>13</sup> The Act of 1869 did not contain these words. It was held under that Act that an instrument which was not duly stamped could be admitted in evidence for a collateral purpose.<sup>14</sup>

Notwithstanding the words "for any purpose," there is a conflict of decisions as to whether an instrument which is not duly stamped is absolutely inadmissible in evidence or is admissible for any purpose.

The general trend of decisions, however, in the different High Courts, is to the effect that the words "for any purpose" include each and every purpose and that an instrument not duly stamped is absolutely inadmissible in evidence and cannot be admitted even for a collateral purpose.<sup>15</sup> Thus, it is the general view that a promissory note not duly stamped cannot be admitted in evidence as an admission of liability in a suit on the original consideration either in proof of such liability or for the purpose of saving limitation under S. 19, Limitation Act.<sup>16</sup> Similarly, an un-

12a. (1891) 1 Ch 568 (574): 60 L J Ch 306: 64 L T 193: 39 W R (Eng) 298.

13. ('28) 15 AIR 1928 Oudh 408 (409): 112 Ind Cas 247, *Bishunath Singh v. Ishri Dayal*.

14. ('80) 4 Bom 349 (352): 5 Ind Jur 318, *Rustomji Eduljee Croos v. Cursetji Sorabjee Croos*. (Documents happening to be unstamped can be admitted, when tendered in evidence, not for the purpose of giving effect to the documents themselves directly, but for some other collateral purpose.)

('70) 4 Beng L R 18 (23, 24): 12 Suth W R 11 (FB), *Luchmeeput Singh v. Mirza Khyrat*. [See ('68) 3 Agra H C R 103a (103e), *Oomrao Sing v. Mehtab Koonwar*. (Documents not bearing proper stamp under Act X of 1862 are not admissible in evidence to show the terms of the deed as against the party producing the same.)]

[See also ('63) 1 Bom H C R 47 (49, 50), *Dhondu Jagannath v. Narayan Ramchandra*. (An account signed by the party but not duly stamped showing the balance up to date, and containing a promise to pay interest upon the consolidated balance, cannot be received as evidence in support of a claim to interest on that balance, but as a *samadaskat*, or simple admission of the balance then due, it is receivable although not stamped.)]

15. ('46) 33 AIR 1946 Mad 534 (535), *Koyatti v. Imbihi Koya*. (Final decree for partition not drawn on proper stamp is not admissible in evidence for any purpose whatever.)

('33) 20 AIR 1933 Lah 240 (240): 141 Ind Cas 569, *Rupchand v. Beliram*. (Under S. 35, Stamp Act, an instrument not duly stamped cannot be admitted in any evidence for any purpose whatever (not even as an acknowledgment).)

('07) 30 Mad 386 (387, 388): 17 Mad L Jour 308, *Thaji Beebi v. Tirumalaiappa Pillai*. (Unlike an invalid instrument which is receivable in evidence for collateral purposes, a document not duly stamped is not admissible for any purpose whatsoever.)

16. ('46) 33 AIR 1946 Pat 118 (118): 226 Ind Cas 28, *Jung Bahadur v. Bansropan Singh*. (Suit on basis of insufficiently stamped promissory note in which reference was made to principal and interest due under previous note—Inadmissible to prove acknowledgment.)

('38) 25 AIR 1938 All 619 (620): 178 Ind Cas 578, *Ratanji Bhagwanji & Co. v. Prem Shankar*. (Promissory note insufficiently stamped—Judge cannot split it up and admit portion of it as acknowledgment to save limitation.)

\*('37) 24 AIR 1937 All 101 (104): 166 Ind Cas 919 (DB), *Bibbo v. Gokaran Singh*. (Document cannot be split up to prove acknowledgment.)

('36) 63 Cal 813 (816, 817, 818): 40 C.W.N. 399, *Jogendra Chandra Banerji v. Shacheendra Kumar Sheal*.

('23) 10 AIR 1923 Lah 29 (30): 68 Ind Cas 461, *Joti Prasad v. Brij Raj Sharan*.



stamped acknowledgment cannot be relied upon not only as evidence of the debt but even for the purpose of saving limitation.<sup>17</sup>

But there *are* certain decisions which hold that although an instrument which is not duly stamped cannot be admitted for the purpose of enforcing the instrument, it may be admitted for a collateral purpose.<sup>18</sup> These decisions proceed on the reasoning that the section only precludes the admission of a document as an *instrument* i. e., for the purpose of affecting any right or liability.<sup>19</sup> (See definition of "instrument" in S. 2 (14).) But the weight of authority, especially of later decisions is definitely against this view.

In the undermentioned Full Bench decisions<sup>19a</sup> of the Allahabad High Court it has been held that an unstamped document (promissory note) can be looked into in order to determine whether it contains all the terms of contract or not. The

\*('38) 25 AIR 1938 Mad 75 (77) : I L R (1938) Mad 210 : 175 Ind Cas 24 (DB), *Nageswara Rao v. Narayanamurthi*. (AIR 1930 Mad 485; AIR 1933 Mad 251, dissented from.)

('37) 24 AIR 1937 Mad 364 (365) : 169 Ind Cas 692, *Ramanatha Ayyar v. Narayanaswami*.

('40) 27 AIR 1940 : Nag 214 (215) : I L R (1941) Nag 761 : 190 Ind Cas 818, *Jawanmal Bhalchand v. Akaji Anand Rao*.

('33) 20 AIR 1933 Nag 391 (391) : 147 Ind Cas 981, *Govinda v. Hari Bhau*.

('28) 15 AIR 1928 Oudh 408 (409) : 112 Ind Cas 247, *Bishunath Singh v. Ishri Dayal*.

[See ('35) 22 AIR 1935 Pat 375 (376) : 14 Pat 233 : 158 Ind Cas 962 (DB), *Tribhuan Ojha v. Ramchandra Dube*. (A promissory note which is not properly stamped is not only inadmissible for the purpose of proving the debt covered by it, but cannot also be used to support the statement of the plaintiff's witnesses who come to prove the debt.

NOTE.—In this case, however, it was held that a document may be admitted for a collateral purpose; but that the proof of the debt, by means of an unstamped promissory note is not collateral purpose.)]

[See also ('35) 22 AIR 1935 Nag 54 (55) : 31 Nag L R 162 : 156 Ind Cas 213, *Kedarmal Raghunath v. Ratiram*. (Bond not duly stamped cannot be admitted in evidence in suit on original consideration.)]

17. ('97) 21 Bom 201 (204) (FB), *Mulji Lala v. Lingu Makaji*.

('19) 6 AIR 1919 Nag 141 (142) : 50 Ind Cas 781, *Sitaram v. Thakurdas*.

('21) 8 AIR 1921 Pat 292 (292), *Rakhal Chandra v. Ram Chandra*.

Also see Art. 1 Note 12.

18. ('34) 21 AIR 1934 All 951 (952) : 153 Ind Cas 551, *Randhir Singh v. L. Thaman Lal*. (Promote which was insufficiently stamped though not admissible as such can be used as an acknowledgment : AIR 1926 Mad 1148 relied on.)

('81) 3 All 581 (584) : 1881 All W N 49 (FB), *Kanhaya Lal v. Stowell*. (Insufficiently stamped promissory note may be admitted as acknowledgment.)

('94) 18 Bom 614 (616) (DB), *Fatechand Harchand v. Kisan*. (Unstamped acknow-

ledgment can be relied on to save limitation.) ('41) 28 AIR 1941 Nag 70 (71) : 192 Ind Cas 891, *Mahdaorao Narayanrao v. Hanmant Dhaduji*. (Document not basis of suit not being instrument of obligation—It can be used as piece of evidence in support of plaintiff's allegations.)

('38) 25 AIR 1938 Nag 294 (295) : 177 Ind Cas 678, *Sudamsa v. Kisanrao*. (Insufficiently stamped promissory note is admissible as acknowledgment of liability.)

('36) 23 AIR 1936 Nag 225 (226) : 167 Ind Cas 673 (DB), *Ananda Namdeo v. Pundalik Tukaram*. (Under stamped promissory note—Suit for money had and received—Promissory note can be taken into consideration as evidence containing admission of receipt of loan.)

('20) 7 AIR 1920 Pat 50 (56) : 5 Pat L Jour 660 : 58 Ind Cas 99 (DB), *Braj Mohan v. Lachmi Narain*. (Mullick, J.—Although a document is inadmissible for the purpose of proving a claim, it may be admissible for a purpose foreign and not subordinate to the purpose for which the document was executed.)

('35) 22 AIR 1935 Pat 375 (376) : 14 Pat 233 : 158 Ind Cas 962 (DB), *Tribhuan Ojha v. Ramchandra Dube*. (A collateral purpose is a purpose foreign and not subordinate to the purpose for which the document was executed.)

19.†('36) 23 AIR 1936 Nag 225 (226) : 167 Ind Cas 673 (DB), *Ananda Namdeo v. Pundalik Tukaram*.

('35) 22 AIR 1935 Pat 375 (376) : 14 Pat 233 : 158 Ind Cas 962 (DB), *Tribhuan Ojha v. Ramchandra Dube*. (But use of unstamped promissory note in suit on original consideration is not for collateral purpose.)

[See ('38) 25 AIR 1938 Nag 294 (295) : 177 Ind Cas 678, *Sudamsa v. Kisanrao*.]

('46) 33 AIR 1946 All 126 (127) : 228 Ind Cas 551 (FB), *Major Mistri v. Bindu Debi*.

19a. 30 (AIR 1943 All 220, 230, 231 : ILR (1943) All 610 : (FB) Rel. on.)

('43) 30 AIR 1943 All 220 (230, 231) : ILR (1943) All 610 : 206 Ind Cas 578 (FB), *Seo-Nath Prasad v. Sarju Nonia*.



reason given is that the words "No instrument... shall be admitted in evidence" in this section only mean that the document shall not be made the basis of the decision or that it shall not be relied on to support any finding, but to look at the document merely for the purpose of finding out whether it contained all the terms or not (in order to attract the provisions of S. 91 Evidence Act) would not be really admitting it in evidence.

In a Rangoon decision,<sup>20</sup> a distinction was made between a collateral matter and a collateral purpose. It was held that although a document not duly stamped is not admissible in evidence for a collateral purpose, it is admissible to prove a collateral matter. The admission of a document to prove the transaction embodied in it but not for the purpose of enforcing the instrument was said to be an admission of the document for a collateral purpose. But where a document was admitted not for the purpose of proving the transaction for which it was executed, but for proving some other matter, the document, it was said, was admitted to prove a collateral matter. This distinction was based upon the view expressed in Mulla and Pratt's Stamp Act, 2nd Edn., page 113 (now see 4th Edn., 1941, page 102).

This view has been criticised by the Madras High Court<sup>21</sup> as being in conflict with the express provisions of the section and, is, it is submitted, not correct.

The above conflict of decisions has now been set at rest by a recent decision of their Lordships of the Privy Council in *Ram Rattan v. Parma Nand*<sup>21a</sup>. In that case an unstamped memorandum of partition which constituted an instrument of partition requiring stamp under the Act was sought to be admitted in evidence for the purpose of corroborating the oral evidence with regard to the factum of partition as distinct from its terms. Their Lordships of the Privy Council held that the document could not be admitted for any purpose and observed as follows :—

"A document admitted in proof of some collateral matter is admitted in evidence for that purpose, and the Statute enacts that it shall not be admitted in evidence for any purpose. Their Lordships see no reason why the words "for any purpose" in the Indian Act of 1879 should not be given their natural meaning and effect. Such words may well have been inserted by the Legislature in order to get rid of the difficulties surrounding the question of what amounted to collateral purpose."

In view of the above decision of the Privy Council the decisions which hold that an unstamped document can be admitted for collateral purpose or collateral matter are now no longer good-law.

20. ('37) 24 AIR 1937 Rang 408 (412) : 1937 Rang L R 127 : 173 Ind Cas 604, *J. N. Ezekiel v. Mordecai*. (An unstamped promissory note cannot be admitted in evidence as an acknowledgment of debt under S. 19 of the Limitation Act, owing to the plain provision of S. 35 of the Stamp Act. The admissibility of such an unstamped document for the proof of any fact turns upon the distinction between a collateral purpose and a collateral matter. A collateral matter is any matter the proof of which does not depend upon proof of the transaction, (e. g.) proof of payments which have been made and which are endorsed on the promissory note. For this purpose the endorsements would be receivable in evidence, as the proof of the payments does not depend upon proof of the transac-

tion for which the promissory note was given. A collateral purpose is any matter the proof of which depends upon proof of the transaction, and an acknowledgment of liability is plainly such a collateral purpose, because the proof of an acknowledgment must depend upon proof of the transaction which has to be acknowledged, and S. 35 of the Stamp Act bars the admission of the promissory note in evidence for any such purpose.)

21. ('38) 25 AIR 1938 Mad 75 (77) : I L R (1938) Mad 210 : 175 Ind Cas 24 (DB), *Nageswara Rao v. Narayanamurthi*.

('46) 33 AIR 1946 PC 51 (53) : 73 Ind App 28 : ILR (1946) Lah 63 : 223 Ind Cas 241 ILR (1946) Kar (PC) 31 (PC), *Ram Rattan v. Parmanand*.



Another line of decisions would split up an instrument into different parts and hold it as admissible in evidence as regards the part or parts which do not require stamp or for which the stamp duty paid is sufficient. The undermentioned cases<sup>22</sup> fall under this class. It is submitted that this line of decisions is also not correct. An "instrument" must be taken as a whole.<sup>23</sup> The mere fact that an instrument comprises several matters will not make it equivalent to several instruments. Section 5 shows that even where several *distinct* matters are included in an instrument there is only one instrument. Although this refers only to the *duty payable* on an instrument, a different meaning of the word "instrument" cannot be adopted for the purpose of its *admissibility* under this section. But at the same time, it should be noted that merely because two or more instruments are written on the same piece of paper they will not necessarily constitute only one instrument.<sup>24</sup> The question whether a paper contains one instrument or more than one instrument depends on the facts and circumstances of each case.

22. ('29) 16 AIR 1929 All 980 (981) : 52 All 169 : 121 Ind Cas 108 (DB), *Govind Sing v. Bijay Bahadur*. (Held, that the portion of the receipt relating to interest amounts to an agreement to pay interest and is to the extent inadmissible for want of proper stamp as if it were a bond but the receipt could be admitted in evidence as an unconditional acknowledgment of the debt which implied a promise to pay and therefore could be the foundation for the suit.)

('37) 24 AIR 1937 Cal 765 (767) : I L R (1937) 1 Cal 257 : 173 Ind Cas 263, *Gulzarilal Marwari v. Ram Gopal*. (Document held inadmissible as promissory note but admissible as an agreement.)

('70) 4 Beng L R 18 (23, 24) : 12 Suth W R 11 (FB), *Luchmeeput Singh v. Mirza Khyrat*. (Instrument containing several distinct contracts.)

('35) 22 AIR 1935 Lah 364 (368) : 16 Lah 667 : 158 Ind Cas 502 (DB), *Abdul Hassain Khan v. Mt. Mahmudi Begum*. (Decree—First portion directing partition—Last portion being a decree for money—Held that the latter part of the decree could be executed though the decree was not stamped.)

('33) 20 AIR 1933 Mad 251 (252) : 141 Ind Cas 169, *Vancheswara Sastri v. Narayana Ayyar*. (Promissory note and express acknowledgment—Latter admissible—Case dissented from in AIR 1937 All 101 and AIR 1938 Mad 75 : I L R (1938) Mad 210.)

('30) 17 AIR 1930 Mad 485 (486) : 124 Ind Cas 53, *Rakkappan Ambalam v. Suppiah Ambalam*. (Where an instrument, instead of merely saying that the promisor promises to pay to the promisee a certain sum of money to order or to bearer, also adds that the amount for which it was given was due in settlement of a previous account, the instrument, even though inadmissible as a promissory note for want of insufficient stamp yet is admissible to prove an acknowledg-

ment under Limitation Act, S. 19, for what is shut out by S. 35, Stamp Act (1899) is the instrument and not collateral matters connected with the instrument which may be mentioned in the same paper or in the same writing. Dissented in AIR 1938 Mad 75 I L R (1938) Mad 210.)

('36) 23 AIR 1936 Nag 225 (226) : 167 Ind Cas 673 (DB), *Ananda Namdev v. Pundalik Tukaram*. (If an instrument contains the record of a certain fact which *per se* does not affect any right or liability, the instrument cannot be said to be admitted in evidence when the document is used solely for the purpose of proving any neutral fact it contains.)

23.†('38) 25 AIR 1938 All 619 (620) : 178 Ind Cas 578, *Ratanji Bhagwanji v. Prem Shankar*.

\*('37) 24 AIR 1937 All 101 (104) : 166 Ind Cas 919 (DB), *Mt. Bibbo v. Gokaran Singh*. ('38) 25 AIR 1938 Mad 75 (77) : I L R (1938) Mad 210 : 175 Ind Cas 24 (DB), *Nageswara Rao v. Narayanamurthi*.

24. See (1847) 10 Q B 846 (850) : 16 L J Q B 374 : 9 L T (OS) 495 : 116 E R 321 (322), *Millen v. Dent*. (A bill of parcels, delivered by plaintiff having at the foot of it a receipt written at the same time with the bill, is nevertheless admissible without a receipt stamp, for the purpose of proving that the goods mentioned were sold to a third person and not to the defendant.)

(1842) 133 E R 1344 (1346) : 11 L J C P 87 *Evans v. Pratt*. (An unstamped paper bore two agreements between A and B. A procured one agreement stamp to be affixed for the purpose of an action upon one of the agreements—Held, sufficient to render the paper admissible in evidents in such action although other agreement had been acted upon.)

(1808) 170 E R 994 (995) : 1 Camp 387 (388), *Grey v. Smith*. (If a receipt for money and an agreement are written on the same piece of paper, this is receivable in evidence as a receipt if it has a receipt stamp, without an agreement stamp.)



An endorsement of payment on the back of a promissory note is not the same document as the promissory note. Hence such endorsement is admissible in evidence though the promissory note is not duly stamped.<sup>25</sup>

Where a promissory note is not enforceable as being in contravention of S. 26 of the Paper Currency Act and a suit is brought on the original consideration, the promissory note can be admitted in evidence as an acknowledgment of the debt as there is no provision of law making inadmissible in evidence a promissory note in a prohibited form.<sup>26</sup>

**9. Refreshing memory.**—It is well established that a document though inadmissible in evidence may be used to refresh the memory of a witness while under examination.<sup>1</sup> (Evidence Act, S. 159). The reason is that this does not amount to “admitting” the document in evidence. The evidence that is being admitted in such cases is only the *oral* evidence of the witness.

**10. Cross-examination.**—A party cannot be cross-examined as to the contents of a document not admissible for want of a stamp.<sup>1</sup>

**10a. Corroboration.**—An unstamped instrument of partition cannot be used for corroborating oral evidence for the purpose of determining even the factum of partition as distinct from its terms.<sup>1</sup>

**11. “Or acted upon.”**—Under this section, a document which is not duly stamped is not only *inadmissible* in evidence but also incapable of being “acted upon.” Thus, even where the execution or contents of the document are admitted by the defendant and hence, under S. 58 of the Evidence Act, the “proof” of the document is dispensed with, and therefore there is no question of *admitting the document in evidence*, the Court cannot take note of the document and grant relief on its basis.<sup>1</sup>

25. ('39) 26 AIR 1939 Mad 34 (36): 183 Ind Cas 882, *Kondamma v. Venkatarayadu*. (AIR 1917 Mad 460 relied on.)

('37) 24 AIR 1937 Rang 408 (412): 1937 Rang L R 127: 173 Ind Cas 604, *J. N. Ezekiel v. E. Mordecai*. (NOTE.—It was held that the endorsement of payment is a collateral matter—As seen above, the distinction between a collateral purpose and a collateral matter is not conclusive for the purpose of this section—The real reason for holding that the endorsement of payment can be proved is that it is another instrument altogether.)

26. ('22) 9 AIR 1922 Mad 181 (183): 45 Mad 778: 69 Ind Cas 939 (DB), *Natarajulu Naicker v. Subramanian Chettiar*.

#### Section 35—NOTE 9

1. ('35) 22 AIR 1935 Pat 375 (376): 14 Pat 233: 158 Ind Cas 962 (DB), *Tribhuan Ojha Ramchandra Dube*.

†(1896) 1 Q B 325 (326): 65 L J Q B 252: 74 L T 27: 44 W R (Eng) 300, *Birchall v. Bullough*. (Suit for money lent—Unstamped promissory note may be used to refresh defendant's memory of the loan.)

(1802) 170 E R 695 (696): 6 R R 854, *Ram-bert v. Cohen*. (Unstamped receipt.)

(1828) 108 E R 948 (949): 6 L J (OS) K B 229: 32 R R 328, *Maugham v. Hubbard*. (Do.)

(1801) 102 E R 178 (179): 1 East 460 (462, 463), *Jacob v. Lindsay*. (Do.)

#### Section 35—NOTE 10

1. (1858) 175 E R 723 (724, 725): 115 R R 906, *Baker v. Dale*.

10a. ('46) 33 AIR 1946 P C 51 (53): 73 Ind App 28: ILR (1946) Lah 63: ILR (1946) Kar (PC) 31: 223 Ind Cas 241 (PC), *Ram-Rattan v. Parma Nand*.

#### Section 35—NOTE 11

1.†('94) 18 Bom 369 (371): 1893 Bom P J 224 (DB), *Chenbasapa v. Lakshman Ram-chandra*.

('74) 21 Suth W R 1 (2) (DB), *Ankur Chunder Roy v. Madhub Chunder Ghose*. (Case under Act of 1869).

('39) 26 AIR 1939 Lah 31 (34): 182 Ind Cas 330 (DB), *Firm Sri Chand Sheo Prasad v. Lajji Ram*.

('34) 21 AIR 1934 Lah 606 (607): 153 Ind Cas 1076 (DB), *Sohanlal Nihal Chand v. Raghunath Singh*.

(06) 1906 Pun Re No. 66, page 239 (242). 1907 Pun L R No. 73 (DB), *Gangaram v. Amirchand*.

('10) 7 Ind Cas 320 (320) (Mad), *Kodali Mathaya v. Tangopala Ramaya*. (In a suit based upon an unstamped promissory note and not on the original consideration which gave rise to it no decree should be passed even where the defendant admits liability (To pass a decree in such a case would be to act on the promissory note which is prohibited by S. 35, Stamp Act.)



Where the admission is outside the Court it may be *secondary* evidence of the document, which, as will be seen in Note 13, is not admissible where the original is not duly stamped.

In some decisions, however, it has been held that where the defendant admits the execution of a document, a decree may be passed against him on such admission though the document is not duly stamped.<sup>1a</sup> It is submitted that this view is not correct, and it is also against the weight of authority.

But where a suit based on an unstamped instrument is compromised and a decree passed on the compromise, the *instrument* cannot be said to be acted upon.<sup>2</sup>

*Setting aside* an instrument is not acting on it. Hence, a suit for setting aside an instrument cannot be dismissed merely on the ground of the instrument not being duly stamped and the plaintiff not paying the deficit duty and penalty.<sup>3</sup>

Similarly, where a suit is based on the *original consideration*, an admission by the defendant of the plaintiff's claim may constitute the basis of a decree against the

†('35) 22 AIR 1935 Rang 282 (283) : 158 Ind Cas 533 (DB), *Maung Po Chein v. C. R. V. V. v. Chettyar Firm*.

('14) 1 AIR 1914 Low Bur 62 (63) : 7 Low Bur Rul 101 : 23 Ind Cas 975, *Bally Singh v. Bhugwan Dass Kalwar*. (Where the plaintiff has no case of action independently of the unstamped promissory note he cannot succeed at all even if the defendant admits the execution of the document and cannot get a decree because to grant a decree in such a case would amount to "acting on" the promissory note in direct contravention of S. 35.)

('20) 7 AIR 1920 Sind 66 (67) : 13 Sind L R 169 : 57 Ind Cas 386 (DB), *Lokumal v. Sind Bank Ltd.*

[See also ('19) 6 AIR 1919 Mad 833 (833, 834) : 42 Mad 41 : 48 Ind Cas 158 (FB), *Mallappa v. Natam Naga Chetty*. (Order by Wallis, C. J. :—"Where the legislature has enacted not only that an unstamped promissory note should not be received in evidence but also that it should not be 'acted on,' it was held that the Court was precluded from acting, on the note by giving a decree on it, even though the execution was admitted.")]

('82) 5 Mad 166 (168) (DB), *Valiappa Ravuthan v. Mahomed Khasin Marakayar*. (Unstamped 'hundi—Suit on, not maintainable though the defendant had admitted the loan.)]

1a. ('47) 34 AIR 1947 Mad 422 (423), *Ponnusami v. Kailasam*. (Suit for recovery of two loans evidenced by two unstamped documents—Defendant admitting their execution but pleading substitutions of liability by execution of another promissory note and a partial discharge towards it—Plaintiff held entitled to a decree—AIR 1932 Mad 693 foll.)

('92) 1892 Bom P J 299 (DB), *Pestonji v. Palanji*.

('38) 25 AIR 1938 Lah 511 (512) : 178 Ind

Cas 197, *Dulichand Maidhan v. Panthi* (Where the execution of a document which is not duly stamped is admitted by one of the defendants, the document cannot be rejected as against him.)

('32) 19 AIR 1932 Mad 693 (695) : 139 Ind Cas 486, *Alimane Sahiba v. Subbarayadu*. (A pronote was inadmissible as its stamp was not cancelled. In a suit on the pronote the defendant admitted the execution of the note and allegations in the plaint but pleaded discharge—Held that in view of the admission the circumstance that the pronote was not admissible in evidence was immaterial for the purpose of the case.)

('68) 3 Mad H O R 158 (160) (DB), *Muttukaruppa Kaundan v. Rama Pillai*. (The established rule of evidence in England that the statement of a party is admissible original evidence against himself to prove the contents of the written instrument is applicable in India, and hence a plaintiff suing on a lease might, so far as regards proof of the terms of the lease, recover on defendants admission without payment of the stamp duty and penalty.)

('11) 11 Ind Cas 810 (811) (Low Bur), *Rahimtalla v. H. Murry*.

[See also (1805) 32 E R 1215 (1220) : 11 Ves 583 (597), *Huddleston v. Briscoe*. (Agreement in form of correspondence—Suit for specific performance—Correspondence admitted by defendant—Letters can be read though not stamped with agreement stamp.)]

2. ('34) 21 AIR 1934 Lah 637 (637) : 151 Ind Cas 708 (SB), *Munshi Ram v. Harnam Singh*. (Document insufficiently stamped attached to plaint—Decree on terms of compromise without document being put in evidence—Document is not acted upon.)

3. ('18) 5 AIR 1918 Upp Bur 31 (32) : 2 Upp Bur Rul 146 : 39 Ind Cas 382, *MaShwe Pu v. Maung Po Dan*.



defendant.<sup>4</sup> In such a case, it must be noted that the admission is not of the *document* but of the original liability of the defendant on which the plaintiff sues. Hence, there is no question of the document being admitted in evidence or acted upon in such a case. An admission of the execution of the *document* will be unavailable to the plaintiff whether the suit is on the document itself or on the original consideration.<sup>4a</sup> (See Notes 12 and 8.)

Where a proxy is not properly stamped or the stamp on it is not cancelled, the vote given by the person holding the proxy cannot be held as a valid vote, as to treat the vote as valid would be to "act upon" a proxy which is not duly stamped.<sup>5</sup>

**12. Suit on original consideration.**—Under S. 91 of the Evidence Act, where the terms of a contract have been reduced to the form of a document, no evidence will be admissible in proof of the terms of such contract, except the document itself or secondary evidence thereof where the case is one in which secondary evidence is admissible. Hence, where a promissory note or a bill of exchange is not duly stamped and, therefore, not admissible in evidence, the note or bill cannot be sued on.<sup>1</sup> In such a case, the question arises whether the plaintiff can sue on the original consideration, i.e., sue for the debt apart from the bill or note. (See illustration (b) to S. 91 of the Evidence Act.)

On this question it is well settled that where there is a *pre-existing* debt or liability and a bill or note is passed in respect of it, the plaintiff can fall back on the original consideration the document is not admissible in evidence as not being duly stamped.<sup>2</sup>

4. ('46) 33 AIR 1946 All 126 (127): 228 Ind Cas 551 (FB), *Major Mistri v. Bimda Bibi*. (Suit for recovery of loan evidenced by unstamped pronote—Defendant admitting loan in his pleadings and evidence given which proved transaction of loan quite independently of the promissory note—Plaintiff held entitled to a decree.)

(1900) 24 Bom 360 (362, 363): 2 Bom LR 25 (DB), *Krishnaji Narayan v. Rajmal Manikchand*.

('20) 7 AIR 1920 Sind 66 (67, 70): 13 Sind LR 169: 57 Ind Cas 386 (DB), *Lokumal v. Sind Bank Ltd.*

[See ('37) 24 AIR 1937 Pat 560 (561): 171 Ind Cas 591, *Banke Bihari Lal v. Ram Uchit Singh*. (A Promissory note executed on 28th March 1934 used revenue stamps, the use of which was made compulsory by the Government only from 1st April 1934. The trial Court dismissed the suit on the ground that the stamps were affixed later on though defendant had admitted the loan—In appeal held that these stamps must have been made available before 1st April 1934 and the suit should not have been dismissed merely on this ground especially when the defendant had admitted his liability.)]

4a. ('06) 1906 Pun Re No. 66 page 239 (242): 1907 Pun LR No. 73 (DB), *Gangaram v. Amirchand*.

[See ('37) 24 AIR 1937 Rang 408 (411): 1937 Rang LR 127: 173 Ind Cas 604, *J. N. Ezekiel v. Mordecai*. (Unstamped promissory note.—Allowing such an instrument in evidence as an acknowledgment of liability, would be "acting upon" the

promissory note in the strictest sense of that expression and therefore is not admissible as an acknowledgment.)]

5. ('28) 15 AIR 1928 Bom 80 (89): 108 Ind Cas 465, *In re Tata Iron and Steel Co., Ltd.* (Where the validity of a vote in a shareholder's meeting is questioned on the ground that the proxy signed by a shareholder is unstamped and the company in its defence offers the proxy itself in evidence, relying on it for the rebuttal of the objection, the company asks the Court to "act upon" the proxy. The unstamped proxies or those the stamp on which is not cancelled, therefore, are excluded.)

Also see Art. 52 Note 4.

#### Section 35—NOTE 12

1. ('82) 5 Mad 166 (168) (DB), *Valiappa Ravuthan v. Mahommed Khasim*. (Suit on unstamped hundi and not on original consideration—Court cannot act on the hundi.)

2. ('43) 30 AIR 1943 All 220 (224): ILR (1943) All 610: 206 Ind Cas 578 (FB), *Sheonath Prasad v. Surju Nomia*. (Where a promissory note is given in relation to a pre-existing liability, the pronote may operate in one of the three ways (i) either as absolute payment (2) or as a conditional payment (3) or by way of a collateral security and whether it operates in one way or other is a question depending upon evidence in each case. In absence of evidence it operates as a conditional payment only and in such case the pronote does not express the terms of original loan. If the pro-note is inadmissible for want of stamp the original loan can be enforced independently of the pro-note.)

('04) 26 All 178 (182): 1903 All WN 217



This is based on the ground that in such cases, the liability sought to be enforced is clearly distinct from that arising under the bill or note.

*Parsotam Narain v. Taley Singh.*  
'82) 4 All 135 (137): 1881 All W N 144 (DB),  
*Hira Lal v. Diatta Din.* (Promissory note given for balance due out of old debt.)  
(34) 21 AIR 1934 Cal 554 (555): 61 Cal 433: 150 I. C. 982 (DB), *Ramendra Mohan v. Keshab Chandra.* (Adjustment of accounts—Certain sum found due to plaintiff—Defendant executing pronote not duly stamped—Plaintiff can sue on original consideration.)  
(19) 6 AIR 1919 Cal 347 (348): 51 I. C. 945 (DB), *Gobinda Kumar Sur v. Ram Chandra Bhattacharjee.*  
(82) 8 Cal 721 (724): 11 Cal L R 310 (DB), *Radhakant Shaha v. Abhoychurn Mitter.*  
†(81) 7 Cal 256 (259): 8 Cal L R 533 (DB), *Sheikh Akbar v. Sheikh Khan.* (When a cause of action for money is once complete in itself, whether for goods sold, or for money lent, or for any other claim, and the debtor then gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may always, as a rule, sue for the original consideration, provided that he has not endorsed or lost or parted with the bill or note, under such circumstances as to make the debtor liable upon it to some third person. In such cases the bill or note is said to be taken by the creditor on account of the debt, and if it is not paid at maturity, the creditor may disregard the bill or note and sue for the original consideration.)  
(26) 13 AIR 1926 Lah 328 (329): 7 Lah 113: 92 Ind Cas 1015 (DB), *Budhu Mal Parma Nand v. Gokal Chand.* (It is a question of fact to be decided in each particular case whether the parties intended the subsequent hundi to be an absolute or a conditional payment of the original debt and the presumption is that the effect of giving or taking of a bill or note is that the debt was conditionally paid.)  
(26) 13 AIR 1926 Lah 356 (357): 7 Lah 206 96 Ind Cas 445 (DB), *Hakim Rai v. Ganga Ram.* (A property worth Rs. 25,920 was partitioned between A and B. The property was allotted to B who, inasmuch as he was entitled to only one-half of that property, undertook to pay one-half of that sum to A, and executed a promissory note by way of memorandum of the transaction. The promissory note was found to be inadmissible in evidence. A brought a suit to recover the amount. Held that the promissory note was not the original contract but was a mere collateral security or instrument by which the payment of the original debt might be facilitated. In other words, the cause of action was complete before the promissory note was given and there was an independent admission of the loan quite apart from the

pronote. Hence A could maintain his suit on the original contract.)  
(24) 11 AIR 1924 Lah 144 (145): 4 Lah 198: 75 Ind Cas 555 (DB), *Nathuram v. Dogar Mal.* (Hundis for old balance.)  
(18) 5 AIR 1918 Lah 78 (79): 44 Ind Cas 886, *Bhagat Ram Ganpat Rao v. Chhajju Ram.*  
(91) 1891 Pun Re No. 82, page 401 (407) (DB), *Rahmutulla v. Ganesh Das.*  
(88) 1888 Pun Re No. 61 page 151 (153), *Sheo Das v. Kanhayalal.*  
(86) 1886 Pun Re No. 73 page 157 (158) (DB), *Samad Mir v. Brijlal.* (A suit based upon a hundi inadmissible in evidence for want of proper stamp is still maintainable if the plaintiff can show that he has a cause of action supporting the relief he prays for, complete in itself and anterior to and independent of the hundi, and for which the hundi was given as a collateral security.)  
(38) 25 AIR 1938 Mad 785 (786): 1 L R (1938) Mad 933: 177 Ind Cas 236 (FB), *Perumal Chettiar v. Kamakshi Ammal.*  
(36) 23 AIR 1936 Mad 179 (185): 59 Mad 268: 161 Ind Cas 273 (FB), *Ramaswami Pillai v. Murugiah Padayachi.* (With regard to antecedent debts the position is that the original debt can be sued upon irrespective of the subsequent document or promissory note. The better opinion with regard to contemporaneous loans and promissory notes is that where the promissory note is the consideration for the loan, the debt cannot be proved *aliunde* in view of S. 91, Evidence Act—Case law discussed—(Per Beasley, C. J.)—Promissory note given in consideration of sale of paddy—Held that it was only given as conditional payment.)  
(34) 21 AIR 1934 Mad 503 (505): 155 Ind Cas 164, *Murugappa Chetty v. Nachiappa Chetty.*  
(33) 20 AIR 1933 Mad 117 (119): 140 Ind Cas 833, *Achutaramana v. Jagannadham.*  
(17) 4 AIR 1917 Mad 108 (109): 40 Mad 727: 35 Ind Cas 219 (DB), *Shanmuganatha Chettiar v. Srinivasa Aiyar.*  
(17) 4 AIR 1917 Mad 460 (461): 34 Ind Cas 417 (DB), *Chokalingam Chetty v. Annamalai Chetty.* (Promissory note for amount found due on settlement of accounts.)  
(15) 2 AIR 1915 Mad 455 (456): 23 Ind Cas 85, *Saminatha Pathan v. Radha Krishna Pathan.* (Promissory note for balance due on partnership accounts.)  
(14) 1 AIR 1914 Mad 657 (659): 38 Mad 660: 21 I. C. 864 (DB), *Muthu Sastrigal v. Visvanatha Pandara.*  
(11) 10 Ind Cas 177 (178) (Mad), *Kodali Mallaya v. Tarigopala Ramayya.*  
(06) 29 Mad 111 (113): 15 Mad L Jour 484 (DB), *Yarlagadda Veera Ragavayya v. Gorantha Ramayya.* (Where there is a completed contract between the plaintiff and the de-



But, even in such cases, if the bill or note has been accepted as accord and satisfaction of the debt, the plaintiff cannot fall back upon the original cause of action.<sup>3</sup> The reason is that in such cases, the bill or note completely wipes out the original cause of action which is not revived on the bill or note being found to be inadmissible in evidence on account of its being not duly stamped. But in the absence of evidence to the contrary, the presumption is that payment by means of a bill, note or cheque is a *conditional* payment only,<sup>4</sup> and not an absolute discharge of the prior liability.

fendant independent of the promissory note and the promissory note is not itself the contract but is merely received by the plaintiff on account of the loan made previously by the plaintiff to the defendant, the plaintiff in case of the inadmissibility of the promissory note for want of stamp can sue on the original contract.)

(1900) 23 Mad 527 (528) (DB), *Ramchandra Rao v. Venkataramana Ayyar*. (The purchaser of the assets of a bank in liquidation, which assets included a debt due by defendant to the late bank and a promissory note given in respect of that debt, sued the defendant on the promissory note as well as on the original debt in respect of which the note had been given. The note had not been endorsed until after the bank had been wound-up and had ceased to exist, and the endorsement had been held to be invalid. Held that the plaintiff was entitled to sue for the original debt even though he was not entitled to sue on the promissory note.)

(36) 23 AIR 1936 Nag 225 (227): 167 Ind Cas 673 (DB), *Ananda Namdeo v. Pundalik Tukaram*.

(33) 20 AIR 1933 Pat 575 (576): 12 Pat 862: 146 Ind Cas 471 (FB), *Domoo Khan v. Agha Arshad*.

(21) 8 AIR 1921 Pat 317 (318): 60 Ind Cas 385 (DB), *Ram Narain Sahu v. Lachmi Prasad Sahu*. (Amounts borrowed under *sarkhats*—*Hundis* subsequently executed.)

(20) 7 AIR 1920 Pat 730 (731): 55 Ind Cas 556 (DB), *Suraj Lall v. Anant Lal*. (Hand-note given for balance found due on adjustment of accounts.)

(23) 10 AIR 1923 Rang 254 (256): 1 Rang 121: 76 Ind Cas 522 (DB), *Dawson's Bank Ltd. v. Chetty Firm*. (Where there was no intention on the part of both parties that the taking of the promissory note was to be the *absolute discharge* of so much of the debt, and the note fails and no third party is endangered the creditor is entitled to fall back on the original consideration.)

[See (26) 13 AIR 1926 Cal 831 (835): 53 Cal 418: 96 Ind Cas 97 (DB), *Parbati Charan Mukherjee v. Amarendra Nath*. (When the document is accepted as security for the payment of a pre-existing debt, and merely by way of further assurance, the original debt is not extinguished by reason of a material alteration of the terms of the document—Case relating to mortgage-deed.)

(97) 1897 Pun Re No. 71 page 326 (328) (DB), *Udho Shah v. Hira Shah*. (New contract agreeing to take the money in instalments set up—Contract inadmissible—Old debt not discharged and suit lies thereon.)]

[See also (16) 3 AIR 1916 P C 41 (43): 43 Ind App 264: 38 All 494: 39 I. C. 11 (PC), *Ahmad Raza v. Syed Abid Husain*. (Suit based on independent oral agreement.)]

3. (18) 5 AIR 1918 Lah 78 (79): 44 Ind Cas 886, *Bhagat Ram Ganpat Rai v. Chajju Ram*. (Plaintiff giving up mortgage right in consideration of cash payment and hundi and making endorsement on the mortgage-deed that he had received full payment.)

(91) 1891 Pun Re No. 82 page 401 (407) (DB), *Rahmatulla v. Ganesh Das*. (It no doubt usually is the case that a party who has received a promissory note with a view to the settlement of prior transaction can, if the note be improperly stamped fall back on the prior transaction. But where the creditor grants a receipt admitting that the prior transactions are completely satisfied by the delivery of the promissory note (in this case to a third person) and that he, the creditor, has no further claim thereon, the above rule does not apply and the plaintiff is not entitled to fall back on original consideration.)

(11) 9 Ind Cas 896 (897) (Sind), *Ewart Rylie v. Tarachand Dhanraj*. (Pro-note accepted by plaintiff in full settlement of his claims against defendant.)

[See also (82) 4 All 330 (331): 1882 All W N 55 (DB), *Sirdar Kuar v. Chandrawati*. (Held that as the execution of the bond was intended to consolidate and secure the debt due from the defendant and was the new contract between the parties in supersession of the former one, the suit on the account stated was not maintainable.)

4. (43) 30 AIR 1943 All 220 (224): ILR (1943) All 610: 206 Ind Cas 578 (FB), *Sheonath Prasad v. Surju Nonia*.

(26) 13 AIR 1926 Lah 328 (329): 7 Lah 113: 92 Ind Cas 1015 (DB), *Budhu Mal Parma Nand v. Gokalchand*.

(31) 18 AIR 1931 Nag 113 (115): 27 Nag L R 56: 134 Ind Cas 283, *Mohan v. Ramji*.

(33) 20 AIR 1933 All 109 (109): 140 Ind Cas 117, *Karan Singh v. Lal Singh*. (Receipt given by debtor at time of promissory note—Suit based on receipt is not maintainable.)



Where the giving of the bill or note is *contemporaneous* with the loan and forms part of the same transaction, there is a conflict of decisions on the question whether the plaintiff can sue for the *debt* apart from the bill or note. The following are the main trends of decisions :

1. In such cases, the plaintiff cannot fall back upon the original cause of action.<sup>5</sup>

5. ('33) 20 AIR 1933 All 280 (281) : 144 Ind Cas 130 (DB), *Dhonkal Singh v. Harbans Lal*. (Where the debt due on an unstamped promissory note is acknowledged the acknowledgment is part of the same transaction as the loan by the promissory note and cannot be treated as an independent transaction upon which the plaintiff can frame a cause of action.)

†('31) 18 AIR 1931 All 183 (189) : 53 All 114 : 133 Ind Cas 307 (FB), *Nazir Khan v. Ram Mohanlal*. (Where money is lent on terms contained in a promissory note given at the time of the loan, both the promissory note and the lending being part and parcel of the same transaction, the lender suing to recover money so lent must prove those terms of the promissory note. If for any reason such as the absence of a proper stamp the promissory note is not admissible in evidence, the plaintiff is not entitled to set up a case independent of the note in view of the provisions of S. 91, Evidence Act. He cannot recover the money by proving orally the terms of the contract, 26 All 178 foll; 34 All 158 and 28 All 298 overruled.)

('04) 26 All 178 (182) : 1903 All W N 217, *Parsotam Narain v. Taley Singh*. (When money is lent on terms contained in a promissory note given at the time of the loan, the lender suing to recover money so lent must prove those terms by the promissory note. If for any reason, such as the absence of proper stamp, the promissory note is not admissible in evidence, the plaintiff is not entitled to set up a case independent of the note.)

('35) 22 AIR 1935 Cal 658 (659) : 159 Ind Cas 511, *Tarachand Pratapmal v. Tamijuddin Sheikh*.

('27) 14 AIR 1927 Lah 89 (90) : 95 Ind Cas 704 (DB), *Ram Jas v. Shahab-ud-Din*.

('21) 8 AIR 1921 Lah 217 (219) : 60 Ind Cas 107 (DB), *Gurdasmal Singh v. Ishar Das*. (Where the advancing of loan and the execution of the hundi are *simultaneous transactions* and the contract for repayment is embodied in the hundi, but the hundi is inadmissible in evidence due to insufficient stamp the creditor cannot rely on the original consideration. 16 Ind Cas 33 (All) dissented from.)

('06) 1906 Pun Re No. 66, pge 239 (241) : 1907 Pun L R 73 (DB), *Gangaram v. Amirchand*. (In a suit for a sum of money alleged to be due on an oral agreement entered into by the parties embodied the same day in a pro-note which had been accepted by the plaintiff on account of the debt due to

him, held that the plaintiff had no cause of action for money due otherwise than in the note itself and was not entitled to prove the oral agreement, and that the note being unstamped was inadmissible in evidence under S. 35.)

('98) 1898 Pun Re No. 92, page 329 (333) (DB), *G. O' Gorman v. Mahtab Singh*.

('95) 1895 Pun Re No. 42, page 172 (174 175) (DB), *Bakshi Ram v. Kaka Ram*.

(Where there is no previous transaction of loan and a promissory note is given in return for a loan of money or in payment of movables purchased and the promissory note contains the terms of the contract, the creditor must lose his money, if for want of proper stamp the note is not admissible in evidence.)

('35) 22 AIR 1935 Mad 23 (24) : 58 Mad 261 : 155 Ind Cas 184 (DB), *Chockalingam Chettiar v. Palaniappa Chettiar*.

('33) 20 AIR 1933 Mad 71 (72) : 140 Ind Cas 193, *Chendrasekaran Pillai v. Srinivasa Pillai*. (A suit is not maintainable on the consideration for an inadmissible promissory note when that consideration is contemporaneous with the note. AIR 1914 Mad 657 : 38 Mad 660 followed.)

('32) 19 AIR 1932 Mad 687 (688) : 139 Ind Cas 361 (DB), *Gura Sahu v. Krishnamma*. (Where the debt and the execution of the promissory note are contemporaneous the debt can be proved only by the note.)

(32) 19 AIR 1932 Mad 693 (694) : 139 Ind Cal 486, *Alimane Sahiba v. Subbarayadu*. (In a case where the advance of the money and the execution of the pronote are simultaneous, it is against the policy of S. 91, Evidence Act, to allow the plaintiff to recover on the footing of money advanced when the promissory note is inadmissible in evidence because it is unstamped.)

('14) 1 AIR 1914 Mad 657 (659) : 38 Mad 660 : 21 Ind Cas 864 (DB), *Muthu Sastrigal v. Biswanatha Pandara*. (Where *simultaneously* with the payment of money, a promissory note, containing the terms of the contract of loan, is executed which being unstamped is inadmissible in evidence, there is no independent contractual or other obligation. 10 Mad 94 and 17 Mad L Jour 126 followed.)

†('11) 10 Ind Cas 669 (669) (DB) (Mad), *Chinnappa v. Muthuraman*. (If a loan and the pronote are contemporaneous and form part of one transaction, no suit based on the original consideration is maintainable if the pro-



2. In all such cases, the loan itself gives rise to a distinct cause of action on which the plaintiff can sue even though the bill or note is inadmissible in evidence for want of stamp.<sup>6</sup>

note is inadmissible for insufficient stamp.) [See ('26) 13 AIR 1926 Pat 432 (432) : 95 Ind Cas 348, *Chota Lal Sahu v. Gumani Chaudhury*. (Suit based on promissory note.—Note not duly stamped—Plaintiff's suit must fail.)]

[See also ('88) 12 Bom 443 (446) (SB), *Damodar Jagannath v. Atmaram Babaji*.]

6. ('28) 15 AIR 1928 All 297 (297) : 108 Ind Cas 912, *Chedu Singh v. Jagan Nath Prasad*. ('12) 34 All 158 (164) : 13 Ind Cas 138 (DB), *Ram Sarup v. Jasodha Kunwar*.

('12) 16 Ind Cas 33 (38) (DB) (All), *Baij Nath Das v. Salig Ram*. (Plaintiff can sue for money had and received by the defendant for the plaintiff's use. Case law discussed.)

('06) 28 All 298 (300) : 3 All L Jour 25 (DB), *Banarasi Prasad v. Fazal Ahmed*. (Overruled in AIR 1931 All 183 : 53 All 114 (FB).)

('38) 25 AIR 1938 Bom 286 (287) : 175 Ind Cas 540, *Somabhai Naranbhai v. Kalyanbhai Kashibhai*.

('33) 20 AIR 1933 Bom 476 (477) : 57 Bom 802 : 147 Ind Cas 426 (DB), *Sarafalli v. Mahasukhbhai*. (Cause of action in the promissory note is distinct from the cause of action on the loan which gave rise to the promissory note.)

('30) 17 AIR 1930 Bom 424 (427) : 128 Ind Cas 43, *Manchersha Ardesar v. Govind Ganesh*. (It is open to the plaintiff to base his claim on the promissory note and alternatively on the original debt. AIR 1918 PC 146 : 46 Cal 663 : 46 Ind App 33 (PC) relied on.)

('26) 13 AIR 1926 Bom 357 (358) : 95 Ind Cas 847 (DB), *Ranchhod Raghunath v. Ravji-bhai Nathabhai*. (Material alteration in promissory note—Plaintiff can fall back on original consideration.)

('04) 28 Bom 432 (434) : 6 Bom L R 436 (DB), *Virbhadrappa v. Bhimaji*.

(1900) 24 Bom 360 (364, 366) : 2 Bom L R 25 (DB), *Krishnaji Narayan v. Rajmal Manikchand*. (Where there is an independent admission of a loan, the holder of a hundi, bill or note which is defective and inadmissible in evidence for want of stamp, may still sue on the consideration the person to whom he gave it, though he cannot use the bill in support of his suit. 7 Cal 256 explained.)

('36) 23 AIR 1936 Cal 127 (128) : 167 Ind Cas 441, *Indra Chandra Bag v. Hiralal Rong*.

('36) 23 AIR 1936 Cal 170 (171) : 166 Ind Cas 152, *Mahatabuddin Mia v. Md. Nazir Joddar*.

('18) 5 AIR 1918 Cas 688 (693) : 45 Cal 538 41 Ind Cas 503 (DB), *Sudhrichandra Das v. Kamalchandra Dutta* (Hundis.)

('13) 19 Ind. Cas 840 (842) (DB) (Cal), *Ram Bahadur v. Dasuri Ram*.

†('96) 23 Cal 851 (853) (DB), *Pramatha Nath v. Dwarka Nath*. (An implied contract to

repay money lent always arises from the fact that the money is lent, even though no express promise either written or verbal, is made to repay it. Hence when the defendant admitted that he borrowed Rs. 200, he also admitted that he promised to repay it, and hence plaintiff could maintain an action for breach of this implied contract or promise, entirely independently of any security which may have been given for the advance. 3 Cal 314 relied on; 7 Cal 256 explained.)

('78) 3 Cal 314 (314) : 2 Cal L Rep 412 (DB), *Golapchand v. Thakurani Mohokoom*.

('75) 24 Suth W R 198 (200) (DB), *Sreemutty Noor Bibee v. Shaikh Ramzan*.

('12) 1912 Pun Re No. 18 : 14 Ind Cas 512 (512), *People's Bank of India v. Abdul Karim*. (Suit on hundi.)

('81) 1881 Pun Re No. 4, page 10 (11), *Maniram v. Kalu Mal*. (In a suit to recover the balance of money paid for a hundi which was inadmissible in evidence for want of stamp, held, that the plaintiff, on proof of payment of the original consideration, could recover the balance of the monies thus lent, although he could not put the hundi in evidence.)

('35) 22 AIR 1935 Mad 206 (208, 209) : 160 Ind Cas 1069, *Chinnayya Naidu v. Srinivasa Naidu*. (Overruled by AIR 1938 Mad 785 : ILR (1938) Mad 933 (FB).)

('26) 13 AIR 1926 Mad 1148 (1150) : 98 Ind Cas 75, *Gapala Padayachi v. Rajagopal Naidu*. (Overruled by AIR 1938 Mad 785 : ILR (1938) Mad 993 (FB).)

('35) 22 AIR 1935 Nag 54 (55) : 31 Nag L R 162 : 156 Ind Cas 213, *Kedarmal Raghunath v. Ratiram*.

('33) 20 AIR 1933 Nag 57 (61) : 29 Nag LR 131 : 144 Ind Cas 745 (DB), *Lal Bahadur Singh v. Gulam Yasin*.

('27) 14 AIR 1927 Nag 241 (242) : 104 I.C. 470 (472), *Udaram Magniram v. Laxman*. (6 Nag LR 125 followed.)

('34) 21 AIR 1934 Oudh 57 (57) : 9 Luck 267 : 146 Ind Cas 751 (DB), *Bhirgu Datt v. Gaya Prasad*.

('33) 20 AIR 1933 Oudh 259 (260) : 145 Ind Cas 233 (DB), *Abdul Rahman v. Afzal Husain*.

†('32) 19 AIR 1932 Oudh 235 (240) : 7 Luck 666 : 139 Ind Cas 298 (FB), *Kunwar Bahadur v. Suroj Baksh*. (The fact of the advance of the loan or the amount of the loan cannot be regarded as one of the terms of the promissory note. Hence in spite of the provisions of S. 91, Evidence Act, it is open to the party who has lent the money on terms recorded in a promissory note, which turns out to be inadmissible in evidence for want of proper stamp duty to recover his money by proving orally the advance of the loan.)



3. The question depends on the facts and circumstances of each case.<sup>7</sup> Though the loan and the execution of the bill or note may be contemporaneous, the document may be given only as a collateral security or conditional payment of the loan. In such cases, the note or bill will not itself be the contract of loan and the plaintiff can sue on the debt apart from the bill or note as the two causes of action are distinct. The undermentioned decisions<sup>8</sup>

- (29) 16 AIR 1929 Oudh 399 (400) : 5 Luck 225 : 119 Ind Cas 865, *Nankhu Singh v. Girja Bux Singh*.  
 (24) 11 AIR 1924 Oudh 249 (249) : 26 Oudh Cas 361 : 74 Ind Cas 813, *Dwarka v. Idu*.  
 (03) 6 Oudh Cas 16 (17), *Bachu Lal v. Kandhai Lal*.  
 (37) 24 AIR 1937 Pat 656 (656) : 172 Ind Cas 744, *Anuplal Mahto v. Mahesh Jha*.  
 (33) 20 AIR 1933 Pat 584 (584) : 147 Ind Cas 706, *Balbhadra Singh v. Bhagwat Pande*. (But evidence as regards the rate of interest cannot be given independently of the hand-note.)  
 (31) 18 AIR 1931 Pat 293 (294) : 11 Pat 135 : 133 Ind Cas 685 (DB), *Abdul Md. Khan v. Mahananda Upadaya*. (AIR 1928 Pat 426 : 7 Pat 845 approved.)  
 (28) 15 AIR 1928 Pat 426 (427, 428) : 7 pat 845 : 111 Ind Cas 482 (DB), *Dhaneshwer Sahu v. Ramrup Gir*. (It is only the rate of interest mentioned in the promissory note that cannot be proved.)  
 (23) 71 Ind Cas 968 (970) (Pesh), *Sayad Sikan-dar v. Bhai Ramchand Sant Ram*.  
 (31) 18 AIR 1931 Rang 139 (142) : 9 Rang 56 : 134 Ind Cas 737, *Ram Raghubhir v. United Refineries (Burma) Ltd*.  
 (28) 15 AIR 1928 Rang 242 (243) : 6 Rang 415 : 112 Ind Cas 254, *Ismail Hoosain Mamsa v. K. Purbhubhai*.  
 (20) 7 AIR 1920 Low Bur Rul 1 (7) : 10 Low Bur Rul 54 : 54 Ind Cas 84 (FB), *Kye Maung v. Ma Ma Gale*.  
 [See (18) 5 AIR 1918 Mad 634 (634) : 42 Ind Cas 706 (DB), *Nachimuthu Chetty v. Andiappa Pillai*. (Promissory note payable to bearer on demand, offends against S. 26, Paper Currency Act. No suit can be maintained on it. But suit on original cause of action will lie and promissory note can be relied on as acknowledgment.)]  
 [See also (29) 16 AIR 1929 All 254 (257) : 51 All 530 : 116 Ind Cas 293 (DB), *Kundan Lal v. Bhikari Das Ishwar Das*. (Where a suit was brought on the basis of a hundi but the hundi was held to be inadmissible in evidence the plaintiff is still able to succeed if his suit can be treated as one for recovery of the amount had and received compensation of money paid by him on behalf of the defendant to the creditor of the latter.)  
 (01) 5 Cal WN 56 (57) (DB), *Moti Lal Saha v. Monmohan Gossami*. (Even if the promissory note be a forgery the plaintiff would succeed if he could prove the loan by independent evidence.)  
 (17) 4 AIR 1917 Mad 354 (354) : 33 Ind Cas 661 (DB), *Chami v. Ana Patter*. (A claim for the value or return of goods delivered to defendant cannot be proved by an unstamped agreement between the parties, but the plaintiff can prove the fact of delivery and state that he got nothing in return and the onus is then shifted on to the defendant, for showing his right to detain the goods.)]  
 7. (46) 33 AIR 1946 All 150 (153) : ILR (1946) All 82 : 224 Ind Cas 196 (DB), *Ram Nath v. Bhagwati Prasad*. (Where a promissory note is inadmissible by reason of S. 35 of the Stamp Act, the question whether a suit on an independent cause of action would be maintainable or not would depend upon the nature and contents of the promissory note in question. If it contains substantially all the terms of the contract of the loan between the parties, the creditor cannot fall back upon an independent cause of action. But if it does not contain all the terms, it would be open to the creditor to substantiate his claim by oral evidence. In this case AIR 1931 All 183 : 53 All 114 (FB) and AIR 1943 All 220 : ILR (1943) All 610 (FB) have been considered and it was held that there is no conflict between the two F B decisions.)  
 (38) 25 AIR 1938 Mad 785 (788) : ILR (1938) Mad 933 : 177 Ind Cas 236 (FB), *Perumal Chettiar v. Kamakshi Ammal*.  
 †(36) 23 AIR 1936 Nag 225 (228) : 167 Ind Cas 673 (DB), *Ananda Namdeo v. Pundalik Tukaram*. (It is a question of fact whether there was an oral agreement apart from the promissory note.)  
 (34) 21 AIR 1934 Rang 389 (392) : 12 Rang 500 : 152 Ind Cas 1038 (FB), *Chit Maung v. Roshan N. M. A. Kareem Oomer and Co*.  
 8. (46) 33 AIR 1946 All 126 (127) : 228 Ind Cas 551 (FB), *Major Mistri v. Binda Debi*. (Simultaneous loan and pronote—Plaintiff's cause of action on pronote failing by reason of pronote being inadmissible for want of due stamp—His cause of action in debt survives in the absence of social circumstances and he can fall back on it.)  
 (43) 30 AIR 1943 All 220 (227) 228 : ILR (1943) All 610 : 206 Ind Cas 578 (FB), *Sheo-nath prasad v. Surji Nonia*. (Where a pronote is given in consideration of a sum of money, it is a question of fact in each case whether the sum of money was given as a loan or not. In the absence of all evidence the presumption is that it was given by way of loan and there is the further presumption that the pronote was given in conditional



may be regarded as falling under this principle. But where the note or the bill is itself the contract between the parties, the plaintiff can only sue on the note or bill and if it is not duly stamped and is, therefore, inadmissible

payment of loan. If the pro-note is inadmissible for want of stamp it is open to plaintiff to prove the loan and all its terms and to recover it irrespective and independently of the pro-note by giving other evidence including that furnished by a contemporaneous receipt.)

('29) 16 AIR 1929 All 254 (256) : 51 All 530 : 116 Ind Cas 293 (DB), *Kundan Lal v. Bhukhari Das Iswar Das*. (If a hundi is an embodiment of the whole of the contract between the parties and it is not admissible in evidence and cannot be looked at for the purpose of finding out the terms of the contract, other evidence to prove the terms of such contract cannot be allowed. But where the hundi embodies only a part of the contract between the parties it cannot be said that the whole contract is reduced to the form of a hundi and S. 91, Evidence Act, does not exclude evidence showing the terms of the whole contract which cannot be determined from the hundi alone.)

('10) 6 Ind Cas 126 (126) (DB). (All), *Sri Nath Das v. Angud Singh*. (Father and son borrowing jointly—Promissory note executed by son alone—Son minor—Plaintiff can fall back upon original cause of action.)

('08) 5 All L Jour 162 (163) : 1908 All W N 91 (91) (DB), *Siraj Husain v. Bulaki Ram*.

('87) 9 All 351 (355) : 1887 All W N 49 (FB), *Balbhadar Prasad v. Maharaja of Betia*. (A decree-holder agreed with the employer of his judgment-debtor who had been arrested in execution of the decree, to discharge the latter from arrest upon the condition that the employer would pay the amount of the debt. Accordingly the employer executed a promissory note for the amount of debt. The promissory note was however unstamped. Held, plaintiff could sue on the consideration for the note.)

('27) 14 AIR 1927 Bom 437 (437) : 102 Ind Cas 138, *Jacob & Co. v. A. P. Vicunsey*. (Where a transaction may be regarded as a loan in respect of which the promissory note is passed as payment, if the promissory note is insufficiently stamped, the plaintiff can proceed with the suit on the loan.)

('35) 22 AIR 1935 Cal 102 (105) : 155 Ind Cas 1109 (DB), *Indu Bala v. Lakshmi Narayan*. (Where there is a loan independently of the promissory note the creditor is not debarred from suing on the original cause of action by the fact that the cause of action arose out of the same transaction in the course of which the promissory note was executed. 128 Ind Cas 194 (Cal) followed.)

('30) 128 Ind Cas 194 (195) (Cal), *Abdul Rabhani v. Shyam Lal Thapa*. (AIR 1924 Cal 452 distinguished.)

('27) 14 AIR 1927 Cal 538 (540) : 102 Ind Cas 871 (DB), *Kshetra Nath v. Harasukdas*. (The rule of evidence that where the terms of a contract have been reduced to writing, you cannot give any other evidence of the contract than the written document itself applies only if the document was intended to be the embodiment in writing of the transaction and not if there was a complete oral contract before the writing was given and the document does not express and was never intended to express the whole agreement between the parties. 20 Suth WR 150 and AIR 1923 P C 50 : 50 Ind App 77 : 1 Rang 66 : 50 Cal 338 (PC) and AIR 1916 P C 115 : 43 Cal 895 : 43 Ind App 122 : 8 Low Bur Rul 458 (P C) relied on.)

('13) 19 Ind Cas 436 (438) (Lah), *Lehna v. Ahamed Din*. (Promissory note given for price of goods sold.)

('38) 25 AIR 1938 Mad 785 (786) : ILR (1938) Mad 933 : 177 Ind Cas 236 (FB), *Perumal v. Kamakshi Ammal*.

('36) 23 AIR 1936 Mad 179 (186) : 59 Mad 268 : 161 Ind Cas 273, *Ramaswami Pillai v. Murugiah Padayachi*. (Promissory note given for price of paddy sold—Held it was given as conditional payment only.)

('17) 4 AIR 1917 Mad 108 (109) : 40 Mad 727 : 35 Ind Cas 219 (DB), *Shanmuganatha Chettier v. Srinivasa Aiyar*.

('17) 4 AIR 1917 Mad 201 (201) : 40 Mad, 585 : 36 Ind Cas 741 (DB), *Chidambaram Chettiar v. Ayyasami Thevan*.

('84) 7 Mad 112 (114) : 7 Ind Jur 646 (DB), *Krishnasami Pillai v. Rangasami Chetty* (Note for price of goods sold.)

('36) 23 AIR 1936 Nag 225 (227) : 167 Ind Cas 673 (DB), *Ananda Namdeo v. Pundalik Tukaram*.

('21) 8 AIR 1921 Pat 318 (320) : 60 Ind Cas 652, *Brahma Deo Rai v. Ram Kishun Mahlon*.

('21) 8 AIR 1921 Sind 80 (81) : 15 Sind L R 135 : 65 Ind Cas 37 (DB), *Naraindas v. Jassomal*.

[See also ('73) 11 Beng L R 405 (412) : 20 Suth WR 150, *Kedarnath Dutt v. Sham Lal*. (The parties must have considered the document as the "only repository and appropriate evidence of their agreement.")

('71) 7 Mad H CR 189 (196) (DB), *Ruthna Mudaliyar v. Arumuga Mudaliyar*. (The law is that notwithstanding a paper writing, which purports to be a contract, may be produced, it is still competent to the Court to find, upon sufficient evidence, that this writing is not really the contract.)]



sible in evidence, he cannot fall back on the original consideration.<sup>9</sup>

If the cases cited under the above groups are considered with reference to the respective High Courts, it will be seen that the results may fairly be summed up as follows :

In the Allahabad High Court, the position seems to be settled now after the full Bench decision in *Nazir Khan v. Ram Mohan Lal*<sup>10</sup> that the plaintiff cannot fall back upon the original consideration unless the bill or note has been given in respect of an *antecedent* debt.

In Bombay, Nagpur, Oudh, Patna, and Peshawar the general view is that the plaintiff can always sue on the original cause of action apart from the bill or note as the loan is considered as giving rise to a *distinct* cause of action.

The Calcutta High Court also leans towards the same view though opinion seems to be more fluctuating than in the above Courts.

Opinion in the Lahore High Court is fluctuating.

In Madras and Rangoon, the position has been settled by Full Bench decisions<sup>11</sup> that it is a question of fact in each case whether the bill or note is itself the contract of loan or is only a collateral security or conditional payment.

The Sind Court inclines to the same view.

According to the Rangoon High Court,<sup>12</sup> there is a presumption that a promissory note is only given by way of conditional payment. But the Madras High Court denies that there is any such presumption.<sup>13</sup>

In *Sadasuk v. Kishen Pershad*,<sup>14</sup> it would appear that the consideration passed at the same time as the execution of the hundis on which the suit was based. Their Lordships held that the suit was not maintainable against the defendant as his name

9. ('30) 17 AIR 1930 Bom 66 (68) : 126 Ind Cas 865, *Ravji Bhai Nathabhai v. Ranchhod*. ('82) 8 Cal 721 (724) : 11 Cal L R 310 (DB), *Radhakant Shaha v. Abhoychurn Mitter*. ('81) 7 Cal 256 (259, 260) : 8 Cal L R 533 (DB), *Sheikh Akbar v. Sheikh Khan*. †('74) 21 Suth W R 1 (1) (DB), *Ankur Chunder Roy v. Madhub Chunder*. (No resort to implied contract can be allowed.) ('06) 1906 Pun Re No. 66 p. 239 (242) : 1907 Pun L R 73 (DB), *Gangaram v. Amirchand*. ('88) 1888 Pun Re No. 61 p. 151 (153) (DB), *Sheo Das v. Kanhaya Lal*. ('38) 25 AIR 1938 Mad 785 (788) : ILR (1938) Mad 933 : 177 Ind Cas 236 (FB), *Perumal Chettiar v. Kamakshi Ammal*. ('36) 23 AIR 1936 Mad 179 (185) : 59 Mad 268 : 161 Ind Cas 273 (FB), *Ramaswami Pillai v. Murugiah Padayachi*. ('25) 12 AIR 1925 Mad 351 (352) : 85 Ind Cas 389, *Somaraju v. Venkatasubbarayadu*. (Promissory note for price of jewels sold.) ('07) 17 Mad L Jour 126 (127) (DB), *Somasundaram v. Krishnamurti*. ('87) 10 Mad 94 (96, 97) : 11 Ind Jour 60 (DB), *Pothi Reddi v. Velayudasivan*. (Though the money is first paid and the note is afterwards executed.) ('36) 23 AIR 1936 Nag 225 (227) : 167 Ind Cas 673 (DB), *Ananda Namdeo v. Pundalik Tukaram*. [See also ('88) 12 Bom 443 (446) (SB), *Damodhar Jagannath v. Atmaram Babaji*. (Ad-

mission by the defendant in the written statement will not be available to the plaintiff if the promissory note is itself the contract of loan.)]

10. ('46) 33 AIR 1946 All 126 (127) : 228 Ind Cas 551 (FB), *Major Mistri v. Binda Debi*. ('43) 30 AIR 1943 All 220 (227) : ILR (1943) All 610 : 206 Ind Cas 578 (FB), *Sheonath Prasad v. Surji Nonia*.

('31) 18 AIR 1931 All 183 (186) : 53 All 114 : 133 Ind Cas 307 (FB), *Nazir Khan v. Ram Mohanlal*.

('46) 33 AIR 1946 All 150 (153) : ILR (1946) All 82 : 224 Ind Cas 196 (DB), *Ram Nath v. Bhugwati Prasad*.

11. ('38) 25 AIR 1938 Mad 785 (788) : ILR (1938) Mad 933 : 177 Ind Cas 236 (FB), *Perumal Chettiar v. Kamakshi Ammal*.

('34) 21 AIR 1934 Rang 389 (391, 392) : 12 Rang 500 : 152 Ind Cas 1038 (FB), *Chit Maung v. Roshan N. M. A. Kareen Omer & Co*.

12. ('34) 21 AIR 1934 Rang 389 (391, 392) : 12 Rang 580 : 152 Ind Cas 1038 (FB), *Chit Maung v. Roshan N. M. A. Kareen Omer & Co*.

13. ('38) 25 AIR 1938 Mad 785 (787) : I L R (1938) Mad 933 : 177 Ind Cas 236 (FB), *Perumal Chettiar v. Kamakshi Ammal*.

14. ('18) 5 AIR 1918 P C 146 (146) : 46 Ind App 33 : 46 Cal 663 : 50 Ind Cas 216 (PC).



was not disclosed on the face of the instrument. But at the same time, their Lordships observed as follows:

"It would, of course, have been open to the plaintiffs, had they thought fit to have framed their case in an alternative form and to have sued both on the *hundis* and, alternatively, upon the consideration."

The above words strongly suggest that when money or other valuable consideration passes and a negotiable instrument is given in exchange for that consideration, a cause of action arises on the consideration apart from the engagement evidenced by the instrument.<sup>15</sup>

English decisions seem also to be to the same effect.<sup>16</sup>

But notwithstanding the above judgment of the Privy Council, the conflict of decisions in India has continued.

It is submitted with respect that apart from the authority of the Privy Council, the correct position seems to be also that the plaintiff can have his money back though his *contract* with reference to it is inadmissible in evidence for want of due stamp. Under S. 91 of the Evidence Act, it is only the terms of a *contract* with reference to the money that would be precluded from being proved. But the section is no bar to the plaintiff succeeding on a *non-contractual* basis, e.g., in an action for money had and received.

In *Perumal v. Kamakshi*<sup>16a</sup> Varadachariar J., however, opined that the theory of money had and received cannot be invoked in such cases, as such theory is based on an *implied contract* which, in the class of cases under discussion, cannot be regarded as distinct from the express contract contained in the promissory note.

But his Lordship has not referred to the authorities which hold that in India an action analogous to that for money had and received can be maintained without resort to any theory of *implied contract*.<sup>16b</sup>

In a suit on the original consideration, the plaintiff will not be entitled to interest at the rate mentioned in the promissory note.<sup>17</sup>

15. ('38) 25 AIR 1938 Mad 785 (795) : ILR (1938) Mad 933 : 177 Ind Cas 236 (FB), *Perumal Chettiar v. Kamakshi Ammal*. (See observations of Stodart, J., at p. 795 in his dissenting judgment—It is curious that the decision of the Privy Council in AIR 1918 PC 146 applied by Stodart, J., has not been referred to in the other judgments in the case.)  
16. (1885) 33 WR (Eng) 739 (740) : 53 LT 125, *Yeo v. Dawe*.  
(1808) 9 RR 793 (795) : 127 ER 870, *Brown v. Watts*.  
(1800) 5 RR 515 (516) : 102 ER 22, *Farr v. Price*.  
(1794) 170 ER 623 (624) : 4 Esp 7, *Wade v. Bearley*.  
(1794) 170 ER 345 (345) : 1 Esp 245 (246), *Wilson v. Kennedy*.  
(1788) 102 ER 23 (23) : 1 East 58n, *Tyte v. Jones*. (Where a promissory note had been given for money lent but when produced in Court was unstamped, Lord Kanyon, C.J., permitted the plaintiff to recover on a common count for money lent, by proving that when the money for which the note had been given was demanded of the defendant, he

acknowledged the debt.)

16a. ('38) 25 AIR 1938 Mad 785 (793) : ILR (1938) Mad 933 : 177 Ind Cas 236 (FB).  
16b. ('18) 5 AIR 1918 PC 241 (245) (PC), *John v. Dodwell and Co.* (Case relating to Ceylon. But same considerations applicable to India.)  
[See also ('18) 5 AIR 1918 PC 151 (152) : 46 Cal 670 : 46 Ind App 52 : 50 Ind Cas 444 (PC), *Juscurn Boid v. Pirthichand Lal*.]  
See also AIR Commentaries on the Limitation Act, 2nd (1942) Edn., Art. 62 N. 2.  
17. ('36) 23 AIR 1936 Nag 225 (228) : 167 Ind Cas 673 (DB), *Ananda Namdeo v. Pundalik Tukaram*.  
(1933) 20 AIR 1933 Oudh 259 (260) : 145 Ind Cas 233 (DB), *Abdul Rahman v. Afzal Husain*.  
(1933) 20 AIR 1933 Pat 584 (584) : 147 Ind Cas 706, *Balbhadra Singh v. Bhagwat Pande*.  
(1928) 15 AIR 1928 Rang 242 (243) : 6 Rang 415 : 112 Ind Cas 254, *Ismail Husain Mamsa v. K. Purbhubhai*. (He can recover interest only at a reasonable rate.)  
(1928) 15 AIR 1928 Pat 426 (428) : 7 Pat 845 111 I. C. 482 (DB), *Dhaneshwar Sahu v. Ramrup Gir*.



It is open to the plaintiff to base his claim on the promissory note and alternatively on the original consideration.<sup>17a</sup>

Where a suit is originally based on a promissory note or bill of exchange the Court can allow the plaint to be amended so as to include the original cause of action.<sup>18</sup> Such amendment may be allowed although the period of limitation for a suit on the original cause of action has expired.<sup>19</sup>

Where a promissory note or hundi is executed in renewal of a prior note or hundi and is inadmissible in evidence as not being duly stamped, the plaintiff can sue on the prior note or hundi unless the new document is accepted as accord and satisfaction of the debt due on the prior document.<sup>20</sup> The principle applicable in such cases is the same as in cases where a note or bill is given for a pre-existing debt.

A written *acknowledgment* of a debt, though executed contemporaneously with the debt is not a *contract* and hence, S. 91 of the Evidence Act does not apply to such an acknowledgment. The inadmissibility in evidence of the acknowledgment, therefore, does not affect the maintainability of the suit for the debt.

It has been held in England that if a plaintiff can establish a *prima facie* case without betraying the existence of a written contract relating to the subject-matter of the action, he cannot be precluded from recovering, by the defendant subsequently giving evidence that the agreement was reduced to writing,<sup>21</sup> and this view has also been expressed in a decision in India.<sup>22</sup> It is submitted that in view of the express provisions of S. 91 of the Evidence Act, this proposition cannot be maintained in India.

17a. ('18) 5 AIR 1918 PC 146 (146) : 46 Cal 663 : 46 Ind App 33 : 50 Ind Cas 216 (PC), *Sadasukh Janki Das v. Kishan Pershad*.

('33) 20 AIR 1933 Bom 476 (477) : 57 Bom 802 : 147 Ind Cas 426 (DB), *Sarafalli Mahomedalli v. Mahasukhbhai Jechandbhai*.

('30) 17 AIR 1930 Bom 424 (427) : 128 Ind Cas 43, *Manchersha Ardesar v. Govind Ganesh*.

18. ('33) 20 AIR 1933 Bom 476 (477) : 57 Bom 802 : 147 Ind Cas 426 (DB), *Sarafalli Mahomedalli v. Mahasukhbhai Jechandbhai*.

('30) 17 AIR 1930 Bom 66 (68) : 126 Ind Cas 865, *Ravji Bhai Nathabhai v. Ranchhod*.

('34) 21 AIR 1934 Cal 554 (555) : 61 Cal 433 : 150 I. C. 982, *Ramendra Mohan v. Keshab Chandra*.

'75) 24 Suth WR 198 (200) (DB), *Sree Mutty Noor Bibee v. Shaikh Rumzan*.

('23) 71 Ind Cas 968 (970) (Pesh), *Sikandar Shah v. Bhairam Chand Sant Ram*.

('31) 18 AIR 1931 Rang 139 (142) : 9 Rang 56 : 134 Ind Cas 737 (DB), *Ram Raghuvir Lal v. United Refineries (Burma) Ltd.*

('25) 12 AIR 1925 Rang 282 (283) : 3 Rang 183 : 89 I. C. 435 (FB), *Shuee Myat Maung v. Maung Po Sin*.

19. ('36) 23 AIR 1936 Rang 508 (509) : 14

Rang 383 : 165 I. C. 810, *Krishna Prasad Singh v. Ma Aye*.

20. ('31) 18 AIR 1931 All 560 (561) : 134 Ind Cas 254 (DB), *Salig Ram v. Radhay Shiam*.

('14) 1 AIR 1914 All 25 (26) : 36 All 259 : 23 Ind Cas 589 (DB), *Jagan Prasad v. Indermal*.  
(28) 15 AIR 1928 Lah 424 (425) : 112 I.O. 719, *Bhagat Ram Anant Ram v. Harjas Mal Mehr Chand*.

('23) 10 AIR 1923 Lah 396 (397) : 4 Lah 151 : 75 Ind Cas 827 (DB), *Rahmat Ali Muhammad Faizi (Firm) v. Dewa Singh Man Singh (Firm)*.

('22) 9 AIR 1922 Lah 56 (57) : 67 Ind Cas 856, *Sundar Das v. Puran Singh*.

21. (1840) 113 ER 615 (616) : 9 LJ QB 177, *Doe d. Frankis v. Franki's*

(1840) 133 ER 615 (615) : 56 RR 571, *Mag-nay v. Knight*.

(1832) 110 ER 434 (435) : 4 B & Ad 208 (210) 2 LJMC 15, *R. v. Inhabitants of Padstow*.

(1829) 130 ER 1308 (1310) : 31 RR 429 : 8 LJ (OS) CP 65, *Fielder v. Ray*.

(1818) 129 ER 409 (410) : 8 Taunt 327 (330) *Stevens v. Pinney*.

22. ('94) 18 Bom 66 (74, 75), DB, *Yeshaw-dabai Gopikabai v. Ramchandra Tukaram*.



**13. Secondary evidence.**—There are some circumstances under which, under the Evidence Act, secondary evidence may be given in regard to documents. (Evidence Act, see S. 65.) But where the original is not 'duly stamped' secondary evidence is not admissible.<sup>1</sup> The reason is that secondary evidence is only admissible when primary evidence is admissible.<sup>2</sup> Further, admitting secondary evidence of documents not duly stamped would be equivalent to "acting on" such documents which is prohibited by this section.

Suppose the original is a document which may be admitted in evidence under this section on payment of the deficit duty and penalty. Can secondary evidence of such documents be admitted on payment of deficit duty and penalty? No. Under this section, it is only the *original* of an instrument not duly stamped that can be admitted in evidence on payment of deficit duty and penalty.<sup>3</sup>

Even where the original has been destroyed by the wrongful act of the party objecting, secondary evidence of an unstamped document cannot be given.<sup>3a</sup>

#### Section 35—NOTE 13

1. ('47) 34 AIR 1947 Lah 306 (307): 48 CRL Jour 354: 229 Ind Cas 279, *Mt. Halima v. Emperor*. (Secondary evidence admitted under erroneous impression.—It should be altogether ruled out.) ('99) 1899 All W N 210 (210) (DB), *Baldeo Das v. Jai Ram*. ('96) 18 All 295 (298): 1896 All W N 68, *Kallu v. Halki*. ('38) 25 AIR 1938 Lah 90 (92): 181 Ind Cas 642, *Ladha Ram v. Harichand*. ('22) 9 AIR 1922 Lah 401 (403): 3 Lah 282: 69 I. C. 723 (DB), *Muhammad Ayub v. Rahim Baksh*. ('22) 9 AIR 1922 Lah 354 (354): 66 Ind Cas 153, *Rahim Baksh v. Mohammad Ayub*. ('22) 9 AIR 1922 Lah 307 (309): 2 Lah 330: 66 I. C. 201 (DB), *Chanda Singh v. Amritsar Banking Co.* ('25) 12 AIR 1925 Mad 753 (753): 87 Ind Cas 382, *Doraisami Mudaliar v. Doraiswami Iyengar*. ('07) 30 Mad 386 (387, 388): 17 Mad L Jour 308 (DB), *Thaji Beebi v. Tirumaliappa Pillai*. ('80) 2 Mad 208 (209): 4 Ind Jur 499 (DB), *Senanden v. Kollakiran*. ('69) 4 Mad H C R 312 (314) (DB), *Arunachalam Chetty v. Olagappa Chetty*. ('20) 7 AIR 1920 Nag 131 (132): 16 Nag L R 68: 56 Ind Cas 249, *Pentaya v. Kesheorao*. ('28) 15 AIR 1928 Rang 32 (33): 5 Rang 650: 106 Ind Cas 476, *Ma Saw v. Maung Ba*. (1820), 106 E R 776 (777): 3 B & Ald 588 (590), *The King v. Inhabitants of Castle Morton*. [But see (1840) 151 E R 579 (580, 581): 10 L J Ex 8: 55 R R 760, *Slatterie v. Pooley* (A parol admission by a party to a suit is always receivable in evidence against him, although it relates to the contents of a deed or other written instrument not duly stamped; and even though its contents be directly in issue in the cause.)]
2. ('26) 95 Ind Cas 444 (445) (DB) (Lah), *Muhammad Din v. Allah Ditta*.

3. ('46) 33 AIR 1946 Mad 298 (298): ILR (1946) Mad 672: 225 Ind Cas 377 (DB) *Chidambaram v. Meyyappan*. (Unstamped document produced in Court—Mob setting fire to Court and record destroyed—Copy of document is not admissible even on payment of penalty.) ('96) 18 All 295 (298): 1896 All W N 68, *Kallu v. Halki*. ('21) 8 AIR 1921 Bom 401 (402): 45 Bom 1170: 62 Ind Cas 637 (DB), *Hiralal Ramnarayan v. Shankar Hirachand*. ('38) 25 AIR 1938 Lah 90 (92): 181 Ind Cas 642, *Ladha Ram v. Harichand*. ('22) 9 AIR 1922 Lah 401 (403): 3 Lah 282: 69 Ind Cas 723 (DB), *Muhammad Ayub v. Rahim Baksh*. ('22) 9 AIR 1922 Lah 354 (354): 66 Ind Cas 153, *Rahim Baksh v. Mohammad Ayub*. ('13) 1913 Pun Re No. 33: 16 Ind Cas 950 (953) (DB), *Nanak Chand v. Muhammad Afzal*. ('07) 30 Mad 386 (387): 17 Mad L Jour 308 (DB), *Thaji Beebi v. Tirumaliappa Pillai*. (1900) 23 Mad 49 (54): 26 Ind App 262 (PO), *Raja of Bobbili v. Sitaramasami Garu*. ('92) [ ] 92 (DB), *Ranga Ram v. Bhavayamma*. ('84) 7 Mad 440 (441) (DB), *Kopasan v. Shamu*. ('20) 7 AIR 1920 Nag 131 (132): 16 Nag L R 68: 56 Ind Cas 249, *Pentaya v. Kesheorao*. ('27) 14 AIR 1927 Rang 109 (110): 4 Rang 363: 101 Ind Cas 198 (DB), *Po Hetoo Maung v. Ma Ma Gyi*. ('34) Pun S M, Part 1 B, Ch 3, para 22. [But see ('73) 20 Suth W R 63 (63) (DB), *Haran Chunder Bhoorree v. Russik Chunder Neogjee*. (In cases where a lost deed is shown not to have been stamped, the Court should require the same money to be paid, as if the deed itself were produced.)]
- 3a. (1844) 41 E R 680 (682): 13 L J Ch 221: L T (OS) 49, *Smith v. J Henley*.



But where the original is duly stamped<sup>4</sup> or is not chargeable with duty,<sup>5</sup> secondary evidence can be admitted in the cases mentioned in the Evidence Act, without any question arising as to stamp.

Where secondary evidence of a lost instrument is sought to be given and a party objects to the reception of such evidence, on the ground that the original was not duly stamped, the burden is on him to make good his objection.<sup>6</sup> In such cases, the Court will presume, until the contrary is shown, that the original was duly stamped.<sup>7</sup>

A presumption of due stamping also arises under S. 89 of the Evidence Act, in regard to documents which are in the possession of a party but which he fails to produce after due notice to do so. But the presumption under that section cannot arise where there is no reliable evidence to show that the document is in the possession of the party and that he is intentionally withholding the same.<sup>8</sup>

(1819) 106 E R 440 (441): 21 R R 363, *Rip-piner v. Wright*.

[See also (1850) 15 Q B 187 (199): 81 R R 552, *Rankin v. Hamilton*. (In an action founded upon a document in which both parties have an interest, and which was in the possession of one but is said by him to have been lost, a Judge cannot order that, if such party does not produce the document to be stamped a copy duly stamped shall be read in evidence at the trial, and that the original shall not then be produced on the other side, nor objection taken to the want of a stamp on the original.)]

(1946) 33 AIR 1946 Mad 298 (299): ILR (1946) Mad 672:225 Ind Cas 377, *Chidambaram v. Meyyappan*.

4. ('08) 5 All L Jour 162 (163): 1908 All W N 91 (91), *Siraj Husain v. Bulaki Ram*.

†('14) 1 AIR 1914 Lah 524 (526, 527): 1915 Pun Re No. 29: 27 Ind Cas 489 (DB), *Sukh Dial v. Mani Ram*.

(1825) 130 E R 526 (526, 527): 4 L J (OS) C P 54, *Munn v. Godbold*.

(1809) 127 E R 930 (930, 931): 1 Taunt 507 (508), *Garnons v. Swift*. (If two parts of an instrument are prepared, but one only is stamped, the party having the custody of the unstamped part may give secondary evidence of the contents of the agreement, if the other party refuse on notice to produce the stamped part.)

(1808) 170 E R 1036 (1036): 1 Camp 501 (502), *Waler v. Horsfall*. (If there are two parts of a written agreement, both executed at the same time, but the one stamped and the other unstamped, the unstamped part is receivable as secondary evidence of the contents of the stamped part.)

5. ('28) 15 AIR 1928 Pat 134 (137): 7 Pat 99: 105 Ind Cas 502 (DB), *Herbert Francis v. Md. Akbar*. (Bond executed in England.)

(1928) 15 AIR 1928 Rang 32 (33): 5 Rang 650: 106 Ind Cas 476, *Ma Saw v. Maung Ba*. (Secondary evidence of mere note that a mortgage had been created.)

6. (1856) 139 E R 1276 (1280): 25 L J O P 216: 27 L T (OS) 135: 4 W R (Eng) 547, *Closmadeve v. Carrel*.

(1844) 41 E R 680 (682): 13 L J Ch 221: 3 L T (OS) 49, *Smith v. Henley*.

(1841) 66 E R 929 (929): 11 L J Ch 9: 58 R R 1, *Hart v. Hart*.

7. ('16) 3 AIR 1916 P C 41 (43): 43 Ind App 264: 38 All 494: 39 Ind Cas 11 (PC), *Ahmad Raza v. Syed Abid Hussain*. (Compromise petition lost in the Great Indian Mutiny of 1857. It was presumed that the officer before whom it had been presented had satisfied himself that it was duly stamped.)

(1913) 19 Ind Cas 445 (446) (DB) (All), *Abid Hussain v. Asghar Hussain*. (Do.)

(1841) 66 E R 927 (929): 11 L J Ch 9: 58 R R 1, *Hart v. Hart*.

(1805) 111 E R 722 (725): 4 Ad & El 94 (99), *Pooley v. Goodwin*.

(1805) 103 E R 18 (19): 8 R R 595, *The King v. Inhabitants of Long Buckby*.

[See also ('30) 17 AIR 1930 Sind 4 (8): 126 Ind Cas 741, *Atmaram Mohanlal & Sons v. Notandas Devi Dayal*. (Where a hundi has been lost a presumption arises under S. 118 (f), Negotiable Instruments Act, that the hundi was duly stamped and the stamp was duly cancelled.)

(1870) 5 Ex. 155 (159): 39 L J Ex 60: 22 L T 29: 18 W R (Eng) 466, *Stowe v. Querner*. (On the trial of an action on a policy of insurance, in which the existence of the policy was in issue, the plaintiffs, pursuant to notice to produce, called on the defendant, to produce the original policy. He declined and they thereupon, with a view to prove that it had been duly executed, proceeded to put in a document purporting to be a copy of the policy which they had received from the defendant's broker. The defendant, objected—*Held*, that the copy tendered was under the circumstances of the case, admissible as primary evidence, being in fact an admission that a duly stamped policy had been issued.)]

Also see Preamble Note 35; S. 2 (11) Note 12 and Art. 24 Note 1.

8. ('38) 25 AIR 1938 Lah 90 (91): 181 Ind Cas 642, *Ladha Ram v. Harichand*.



**14. Admissibility of other evidence to prove transaction.**—Where a document is not duly stamped and is consequently inadmissible in evidence under this section, the question arises whether any other evidence is admissible to prove the transaction contained in the instrument. This depends on S. 91 of the Evidence Act, the material portion of which runs as follows :

“When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.”

Hence, where the instrument is a *contract*, other evidence of the terms of the contract will not be admissible as such an instrument is covered by S. 91 of the Evidence Act.<sup>1</sup> But where the instrument is not covered by S. 91 of the Evidence Act, the transaction contained in the instrument can be proved by other evidence. Thus, where a receipt is inadmissible in evidence as not being duly stamped, the fact of payment can be proved by other evidence including oral evidence.<sup>2</sup>

#### Section 35—NOTE 14

1. ('81) 3 All 717 (722): 1881 All W N 47 (DB), *Benarasi Das v. Bhikhari Das*. (Accounts stated between B and D and a balance of Rs. 800 was found to be due from D to B. By a subsequent instrument the amount was agreed to be paid in four annual instalments of Rs. 200 and a note to the same effect was made in the account book. In 1879 B sued upon the instrument for the balance of the first instalment but the Court refused to receive it in evidence as it was insufficiently stamped pronote. B thereupon withdrew the suit and instituted a new suit for recovery of the two instalments basing the claim on the note in accounts book—Held that the agreement by D to pay the balance found due from him to B on account stated between them in instalments of Rs. 200 annually could not be proved by the note made by B in his account books but could only be proved by the pronote.)

('90) 14 Bom 102 (110) (DB), *Ralli v. Caramalli Fazal*.

('75) 24 Suth W R 88 (89) (DB), *Prosunno Nath Lahiree v. Tripoora Soonduree Debee*.

('06) 1906 Pun Re No. 66, p. 239 (241) (DB), *Ganga Ram v. Amir Chand*.

('97) 1897 Pun Re No. 71, p. 326 (327) (DB), *Udho Shah v. Mira Shah*.

(1851) 21 L J Q B 53 (56), *Yorke v. Smith*.

('46) 33 AIR 1946 Mad 534 (535), *Koyathi v. Imbichi Koya*. (Unstamped compromise decree for partition—Partition may be proved by other evidence.—But it is doubtful whether other evidence would be admissible to prove details of partition.)

[See also ('07) 30 Mad 386 (387, 388): 17 Mad L Jour 308 (DB), *Thaji Beebi v. Tirumaliappa Pillai*. (Unstamped mortgage executed in 1841—Suit to redeem—Docu-

ment not produced—Secondary evidence therefore not receivable to prove contents of document—Plaintiff seeking to rely on oral evidence as to execution of document and passing of possession under deed as showing that the defendant by such possession acquired only a mortgagee's right in the property—Held that the receiving of such evidence would be to give some effect to an unstamped document by connecting the possession with the contents thereof and was therefore contrary to the provisions of S. 35. An admission of the mortgage by the defendant's ancestor was also held not receivable on the same ground.)

('47) 34 AIR 1947 Lah 306 (307): 48 CR L Jour 354: 229 Ind Cas 279. *Mt. Hatima v. Emperor*. (Deed of Divorce between Muhammadans is not within S. 91 Evidence Act—Deed not stamped nor forthcoming—Divorce can be proved by oral evidence.)

2. ('23) 10 AIR 1923 Nag 32 (33): 68 Ind Cas 494, *Choudhri Ramprasad v. Nathurama* (An unstamped receipt cannot be proved at all either by primary or by secondary evidence but the fact of payment can be proved by evidence other than the document.)

(1669) 85 E R 463 (465): 1 Wms Saund 323n, (325n), *Veale v. Warner*. (A party paying money is in no case obliged to take a receipt; he may prove the payment by other evidence, as he may even where a receipt has been taken; for it is not like the case of a contract, which, if reduced into writing, can be proved only by production of the writing. And where a receipt is void for want of a stamp, it may be shown to a witness to refresh his memory. Phillips on Evidence, p. 539, 4th Edn., citing (1804) 170 E R 695, *Rambert v. Cohen*, (1801) 102 E R 178, *Jacob v. Lindsay*.)

('46) AIR 1946 All 150 (152): ILR (1946) All



**14a. Admissions by defendant.**—Where the suit is based on the *instrument itself* and such instrument is not duly stamped, an admission by the defendant out of Court regarding the execution or contents of the instrument will be inadmissible in evidence. The reason is that such admission will be a form of *secondary evidence* and as seen in Note 13, secondary evidence of a document even, when otherwise admissible, is inadmissible where the original is not duly stamped.

Even where the admission is made in pleadings or otherwise in Court (Evidence Act, S. 58), the Court cannot pass a decree on the instrument on the basis of such admission. The reason is that thereby the Court would be “acting on” the instrument though not admitting it in evidence. (See Note 11.)

Where the suit is on the *original consideration* the admission of liability by the defendant can be taken into consideration. In such a case the *instrument* is not being admitted in evidence or acted upon.

Where the instrument embodies any of the matters mentioned in S. 91 of the Evidence Act, (namely, a contract, grant or other disposition of property or any other matter required by law to be reduced to the form of a document) no other evidence would be admissible to prove the terms of the transaction. But if the transaction is one that does not fall within the provisions of S. 91 of the Evidence Act, other evidence is not excluded. For instance, where a receipt is not stamped, the fact of payment can be established by other evidence, including admissions. (See Notes 14 and 24.) See also the case noted below.<sup>1</sup>

Where in a suit for redemption of a usufructuary mortgage evidenced by unstamped *muris*, the plaintiff bases his claim not on the unstamped *muris* but on the prescriptive right as mortgagee which the defendant has admitted to have acquired and the plaintiff refers to the *muris* in his plaint merely to show how the prescriptive title as mortgagee was created in the defendant, the plaintiff will be entitled to redemption even though the *muris* are unstamped.<sup>2</sup>

**15. Unstamped decree for partition.**—A decree for partition requires to be stamped under this Act. Otherwise it cannot be “acted upon.” Hence, an unstamped decree for partition cannot be executed. But it can be executed or admitted in evidence on payment of the requisite duty and penalty.<sup>1</sup> See for further discussion S. 2 (15), Note 15.

82 : 224 Ind Cas 196 (DB), *Ram Nath v. Bhagwati Prasad*.

(‘43) 30 AIR 1943 All 220 (230) : ILR (1943) All 610 : 206 Ind Cas 578 (FB), *Sheonath Prasad v. Surju Nonia*. AIR 1936 PC 171 : 17 Lah 557 : 63 Ind App 279 (PC) and AIR 1929 All 254 : 51 All 530 Rel. on.)

#### Section 35—NOTE 14a

1. (‘16) 3 AIR 1916 Sind 86 (92) : 10 Sind LR 14 : 35 Ind Cas 449, *Tarachand Gan-shamdas v. Louis Dreyfus Co.* (Appointment of arbitrator—Admission—Want of stamp immaterial.)

(‘46) 33 AIR 1946 Mad 457 (458) : 227 Ind Cas 374, *Subbiah Pillai v. Muthathal Achi*.

#### Section 35—NOTE 15

1. (‘47) 34 AIR 1947 Bom 96 (98) : ILR (1946)

Bom 876 *Shankar Narayan v. Trimbak Narayan*.

#### Section 35—NOTE 16

1. (‘29) 16 AIR 1929 PC 279 (282) : 56 Ind App 379 : 7 Rang 624 : 120 Ind Cas 645 (PC), *Ma Pwa May v. Chettiar Firm*. (On appeal from AIR 1928 Rang 502 : 5 Rang 666 : AIR 1919 Cal 235, approved.)

(‘19) 6 AIR 1919 Cal 235 (239) : 51 Ind Cas 88 (DB), *Biswanath Bhattacharjee v. Govinda Chandra Das*.

2. (‘85) 11 Cal 750 (754) (DB), *Shama Charandas . Joyenoolah*.

#### Section 35—NOTE 17

1. See however, (1864) 1 Suth WR 12 (13) (DB), *Reedoy Kristo v. Puddo Lochun*. (Arbitrator was not bound by technical rules of Court.)



**16. Registration.**—This section provides *inter alia* that an instrument not duly stamped shall not be “registered.” But where a document *has* been registered, its registration is not rendered invalid by reason of the document not having been duly stamped at the time of the registration.<sup>1</sup> The reason is that the registration in such a case is only an error of *procedure* and does not involve any question of jurisdiction. Such an error is cured by S. 87 of the Registration Act.

There is no provision in the Registration Act or the Stamp Act that where a document is presented for registration insufficiently stamped, the presentation shall be no presentation. It is a good presentation though the actual registration is delayed.<sup>2</sup>

**17. Arbitration proceedings.**—This section precludes not only Courts and public officers but also any person “having by law or consent of parties authority to receive evidence” from admitting in evidence or acting upon instruments not duly stamped. Hence, arbitrators are also bound by the provisions of this section.<sup>1</sup> Thus, where the submission to arbitration is contained in an agreement which is not duly stamped, the arbitrators cannot admit such document in evidence nor act on it except on payment of the deficit duty and penalty.<sup>2</sup> But if the arbitrators actually proceed to act on the reference, the provisions of S. 36 will come into play and the proceedings cannot be questioned afterwards.<sup>3</sup>

An award by arbitrators which is written on unstamped paper can be admitted in evidence on payment of duty and penalty.<sup>4</sup>

**18. Proviso (a)—General.**—Under this proviso, except in the three cases specified therein, an instrument not duly stamped is admissible in evidence on payment of the deficit duty and penalty as laid down therein. The question whether the failure to stamp the instrument duly was intentional or was merely the result of an accident or mistake is immaterial under this section.<sup>1</sup> This was not the position under the Acts prior to the Act of 1879. Under the Acts of 1862 and 1869 Courts could accept deficit duty and penalty only if the omission to duly stamp the instrument was not the result of an intention to evade the stamp duty. The case-law under the provisions of these Acts as to the circumstances under which documents not duly stamped could be admitted on payment of deficit duty and penalty is only of academic interest. Because, it is only this section that will now be applicable to a question of admissibility of an unstamped or insufficiently stamped

2. ('24) 11 AIR 1924 Cal 794 (795): 82 Ind Cas 416 (DB), *Kali Charan v. Mani Mohan* ('21) 8 AIR 1921 Cal 613 (614): 77 Ind Cas 845 (DB), *Rung Lal Kalooram v. Kedar Nath Kesrimal*.

('09) 1 Ind Cas 371 (374) (Cal), *Hurdwary Mull v. Ahmed Musaji*.

3. ('24) 11 AIR 1924 Cal 794 (795): 82 Ind Cas 416 (DB), *Kalicharan v. Mani Mohan*. (But on a *suit* on the award, the jurisdiction of the arbitrators can be questioned.)

('21) 8 AIR 1921 Cal 613 (614): 77 Ind Cas 845 (DB), *Rung Lal Kalooram v. Kedar Nath Kesrimal*. (Award not invalid.)

('12) 39 Cal 669 (677): 16 Ind Cas 153, *Bombay Co. Ltd. v. National Jute Mills Co. Ltd.* (Submission clause contained in bought and sold notes—Stamping as broker's notes is enough—Even otherwise held that S. 36

cured the defect.)

('16) 3 AIR 1916 Sind 86 (92): 10 Sind L R 14: 35 Ind Cas 449, *Tarachand Gansham v. Louis Dreyfus & Co.* (A contract containing the submission to arbitration is not invalid in default of an eight annas stamp under S. 35.)

Also see S. 36 Note 12.

[But see ('09) 1 Ind Cas 371 (374) (Cal), *Hurdwary Mull v. Ahmad Musaji*.]

4. ('13) 1913 Pun Re No. 66: 20 Ind Cas 491 (492) (DB), *Gowardhan Das v. Kesho Ram*. (Application to file award.)

#### Section 35—NOTE 18

1. See ('81) 5 Bom 621 (629): 1876 Bom PJ 162 (DB), *Kastur Bhavani v. Appa*. (The question of intention was immaterial also under Regulation XVIII of 1827.)



document under whichever Act the *duty payable* may be determinable<sup>1a</sup>. The old decisions are, however, noted below<sup>1b</sup> for reference.

1a. ('73) 1873 Bom PJ 112 (DB), *Vinayak v. Mahadaji*. (Inadmissibility depends on law in force at place and time when it is produced in Court.)

1b. ('81) 5 Bom 621 (629): 1876 Bom PJ 162 (DB), *Kastur Bhavani v. Appa*. (Before Acts of 1862 and 1860, question of intention to evade stamp duty was immaterial.)

('74) 1874 Bom PJ 61 (DB), *Nanabhai v. Nagya*. (Where the only dispute in the Courts below as to the sufficiency of the stamp on a certain document was as to the amount of the consideration and not as to the nature of the instrument, and the High Court on special appeal held that the plaintiff's view in that respect was right but that the stamp was insufficient, he was given an opportunity of paying the deficient duty and penalty on satisfying the District Judge that there was no intention to evade payment of the proper duty.)

('73) 10 Bom H C R 358 (359), *Antaji Nilkanth v. Janardan Vasudeo*. (Under Regulation XVIII of 1827, a party has a right to have stamped, on payment of the prescribed penalty, an instrument executed before 1st January 1870, and a civil Court should receive such instrument in evidence on being stamped, and cannot reject it on the ground of intention by the party to evade the stamp duty.)

('73) 10 Bom H C R 406 (408) (DB), *Gambhirmal v. Chejimal*. (Where the lower appellate Court finds as a fact that the document is wilfully executed in fraud of the Stamp-law and refuses to admit it in evidence on payment of the full amount of stamp duty and penalty under S. 20 of Act of 1869, the High Court cannot in special appeal question the correctness of the lower Court's refusal.)

('67) 3 Bom H C R (AC) 94 (101) (DB), *M. G. Pendse v. R. S. Malse*. (Act X of 1862, S. 17—A civil Court is bound to allow the defects in an insufficiently stamped deed to be made good in the manner which the law has provided, when there is no reason to suspect any design on the part of the holder to defraud the revenue; and if it arbitrarily and without assigning any reason refuses the relief which it has power to grant, it is the duty of the Court, to which an appeal lies from its decision, to correct the error which has been committed.)

('67) 3 Bom H C R (OC) 153 (158) (DB), *Royal Bank of India v. Hormasji Kharsedji*, (Act X of 1862, S. 17—A Court to which a document is tendered in evidence under this section ought not to reject it unless it clearly appears that there was an intention to evade the payment of stamp duty.)

('75) 24 Suth W R 88 (90) (DB), *Prasunno Nath Lahiree v. Tripoora Soonduree*. (The

document in question contained an agreement on the part of the defendant that if litigation became necessary, he (i.e. the defendant) would pay whatever expenses might be incurred for stamping the document so as to render it admissible in evidence—Held this stipulation clearly showed that the parties knowing that the document required to be stamped, did not stamp it with the intention to evade the payment of proper duty.)

('71) 17 Suth W R 131 (135) (DB), *Syud Keramut Ali v. Moonshee Abdool Wahab*. (Security bond not specifying any particular sum stamped at Rs. 8 an optional stamp, under Act XXXVI of 1860—Defalcation by the principal of Rs. 17,000—In a suit against sureties for the recovery of Rs. 17,000, held no amount larger than Rs. 1000 e.i. one covered by the stamp of Rs. 8 could be recovered on the basis of the security bond under S. 14. Also that penalty could not make up the deficiency as there was no insufficiency of stamp arising out of accident, ignorance etc.)

('71) 6 Beng L R (App) 117 (118): 15 Suth W R 116 (DB), *Mahomed Rijah v. Collector of Chittagong*. (Act XVIII of 1869 allows the civil Court to receive the proper amount of stamp, not only in cases of insufficiency of stamp, but also where documents have not been stamped at all.)

('70) 13 Suth W R 102 (103) (DB), *Raj Chunder Shaha v. Gobind Chunder Koolal*. (Case under Act X of 1862—The trial Court was competent to find on the facts before it whether the omission or neglect to execute the instrument on paper bearing the proper stamp did or did not arise from any intention to evade the stamp duty, and to decide whether it should admit the document in evidence on payment of duty and penalty, or not.)

('69) 3 Beng L R (AC) 235 (236): 12 Suth W R 47 (DB), *Lalji Singh v. Akram Ser.* (Section 17 of Act X of 1862 only applied to the reception of documents under S. 15, which had been insufficiently stamped, not to documents on which there was no stamp—Such documents could not be received at all.)

('69) 3 Beng L R (AC) 329 (331): 11 Suth W R 553 (DB), *Sashi Bhushan v. Tarachand Kar*. (A bond, contained the following clause: "And inasmuch as we (the defendants) are urgently in want of money, and are unable to procure a stamp at the moment, we have executed the bond on plain paper. Should it be necessary for you (plaintiff) to bring a suit against us, whatever penalty you may have to pay shall be made good by us, with interest."—Held that the clause did not amount to an agreement to evade the stamp laws.)



This proviso is mandatory and a document which is not one of those excepted from it, *must* be admitted in evidence on payment of the deficit duty and penalty.<sup>2</sup>

The requisite stamp duty and penalty need not be tendered at the time when the document is produced. The party is entitled to an opportunity to pay the deficit duty and penalty after the Court has held that the document is not duly stamped.<sup>3</sup> Where he has been denied such opportunity he can be allowed to pay the amount in appeal or second appeal.<sup>4</sup> Where, however, there is no evidence that the requisite amount was tendered and refused in the trial Court and such Court has rejected the document, the appellate Court cannot accept the payment and admit the document.<sup>5</sup>

2. ('47) 34 AIR 1947 Bom 96 (98): ILR (1946) Bom 876, *Shankar Narayan v. Trim-bak Narayan*. (An unstamped partition decree is admissible on payment of duty and penalty.)
- †('24) 11 AIR 1924 P C 221 (221): 51 Ind App 332: 4 Pat 34: 82 Ind Cas 789 (PC), *Lachmi Narayan v. Rameshwar Prasad*. (The Proviso (a) of S. 35 of the Stamp Act of 1899 is of equal ambit with the body of the section, and just as an instrument cannot be acted upon—that is to say nothing can be recovered unless it has a proper stamp—so by the proviso if there is not a proper stamp it may be put on afterwards on payment of a penalty, and the instrument then becomes operative.)
- ('07) 9 Bom LR 122 (124), *Nathu v. Hansraj*
- ('04) 6 Bom LR 699 (702), *Motilal v. Jag-mohandas*.
- ('87) 1887 Bom P J 351 (DB), *Vithu v. Lakh-nak*.
- †('35) 22 AIR 1935 Nag 54 (55): 31 Nag LR 162: 156 Ind Cas 213, *Kedarmal Raghunath v. Ratiram*.
- ('44) 31 AIR 1944 Pat 226 (227): 23 Pat 18 218 Ind Cas 202 (DB), *Yamuna Das v. Behar Engineers and Contractors Ltd.*
- [See also (1865) 176 E R 680 (682): 4 F & F 537 (540), *Cavaleiro v. Puget*. (Action on alleged agreement by the defendant to let to the plaintiff a furnished house—Agreement drawn by the plaintiff and sent to defendant for signature who returned it unsigned with a letter of approval—Held, the agreement with the letter required a 2s. 6d. stamp under 24 and 25 Vict., Ch. 21 but could be admitted in evidence on payment of penalty and the duty.)]
3. ('66) 10 Moo Ind App 438 (452): 5 Suth WR (PC) 55 (PC), *Maharajah Rajendra Kishwar v. Sheopurshun Missur*. (Held that the sudder ammin should have allowed the defendant to get his documents stamped, and, if necessary, should have adjourned the hearing for that purpose. The Court, however, excluded them from evidence, as unstamped, and as documents which were inadmissible unless stamped. The proper course, therefore, is to remand the cause to the lower Court to enable the defendant to get the instruments stamped.)

- ('76) 25 Suth WR 116 (117) (DB), *Dewan Koonjo Lal v. Court of Wards*.
- †('34) 21 AIR 1934 Lah 730 (732): 153 I. C. 233 (DB), *Thakardas Rupchand v. Sher Ahmad Iqbal Ahmad*.
- ('32) 19 AIR 1932 Lah 616 (617): 13 Lah 516: 140 Ind Cas 869 (DB), *Narain Datt v. Kirpakishen*. (Where a document is held to be an insufficiently stamped agreement the trial Court should record at the earlier stages a finding on that issue and given an opportunity to the party to pay the penalty. Where such opportunity was denied, held that the penalty could be allowed to be paid in second appeal.)
- ('30) 17 AIR 1930 Lah 854 (854): 127 Ind Cas 361, *Bhagat Ram v. Rattan Chand*.
- [See ('73) 21 Suth WR 183 (184) (DB), *Zumeerooddeen Shah v. Doorga Kant*. (Re-fusal of first Court to accept stamp duty and penalty offered by a party should be made ground of objection in appeal.)
- (1864) 1864 Suth W R (Gap No.) 321 (321) (DB), *Bissumbhar Doss v. Bristub Churn*. (Even if a plaintiff declines to pay the stamp duty and penalty, a Court should not dismiss the suit but should enquire into the merits on the rest of the evidence.)]
4. ('20) 55 Ind Cas 923 (923) (UP B R), *Ram Baran Singh v. Puja Singh*.
- ('73) 10 Bom H C R 441 (443) (DB), *Ram-Krishna v. Vithu*.
- ('97) 1897 Bom P J 382, *Adarji Darabji v. Rajaram Jhurakhanlal*.
- †('34) 21 AIR 1934 Lah 730 (732): 153 Ind Cas 233 (DB), *Thakar Das Rupchand v. Sher Ahmad Iqbal Ahmad*.
- †('32) 19 AIR 1932 Lah 616 (617): 13 Lah 516: 140 Ind Cas 869 (DB), *Narain Datt v. Kirpakishen*.
- Also see S. 36 Note 10.
5. ('83) 1883 All W N 93 (97) (FB), *Rup-chand v. Thakur Dial*. (Ordinarily, an appellate Court will not direct the reception of an unstamped document, unless the amount of stamp duty and prescribed penalty has been tendered when the admissibility of the document in evidence was first challenged and the document was on this ground re-jected: 4 Cal 213; 7 Suth W R 2, 439; and 10 Bom H C R 441 followed.)



Under this proviso, the document is to be admitted in evidence on payment of the deficit duty and penalty. The Court has no power after it has admitted a document in evidence and passed a decree in the case, to require the deficit duty and penalty to be paid.<sup>6</sup> In such a case the jurisdiction to recover the duty and penalty lies with the Collector under section 48.<sup>7</sup>

The burden of paying the deficit duty and penalty under this section falls in the first instance on the person who seeks to have the document admitted in evidence.<sup>8</sup> As to whether he can be compelled by the Collector to pay the stamp duty and penalty, see Notes on Ss. 29, 40 and 48.

Where the stamp duty paid on an instrument is not *sufficient* the *entire* amount of duty need not be paid under this section. It is enough if the deficit amount is paid<sup>9</sup> along with the penalty. But where the stamps used are not of the proper description their value cannot be taken into account in calculating the deficit duty.<sup>10</sup>

Even where a document bears stamp of the proper amount but not of the proper description with the result that the document is not duly stamped, this proviso will apply and the document can be admitted on payment of the duty and penalty, although the document is neither "not stamped" nor "insufficiently stamped."<sup>11</sup>

In the case of an execution sale, where a certificate of sale has once been granted without stamp, the Court is not bound to grant another certificate on proper stamp

('96) 20 Bom 791 (794) (DB), *Lakshmandas Raghunathdau v. Rambhas Mansaram*.

('73) 10 Bom H C R 441 (443) (DB), *Ramkrishna v. Vithu*.

('79) 4 Cal 213 (215) (DB), *Champabaty v. Bibi Jiban*.

(1900) 1 Low Bur Rul 84 (84), *Ma Shwe Kyaw v. Ma Bok Gale*. (Where the stamp duty and penalty on an award was not tendered in the original Court, appellate Court could not admit the document in evidence even if the stamp and penalty has been tendered to it: 4 Cal 213, followed.)

[See also ('67) 7 Suth W R 439 (439) (DB), *Baboo Gour Pershad v. Lalla Nund Lal*. (Appellate Court is not in a position to order admission of an instrument, when no application was made to the lower Court to receive unstamped instrument (receipts for rent) on payment of stamp duty and penalty.)]

Also see S. 36 Note 10.

6. ('27) 14 AIR 1927 Cal 472 (473): 54 Cal 445: 100 Ind Cas 630 (DB), *Khetra Mohan v. Jamini Kanta*.

('37) 24 AIR 1937 Oudh 176 (177): 12 Luck 752: 165 I. C. 904 (DB), *Baldeo Prasad v. Ajodhya Prasad*.

Also see S. 36 Note 5.

7. ('37) 24 AIR 1937 Oudh 176 (177): 12 Luck 752: 165 I.C. 904 (DB), *Baldeo Prasad v. Ajodhya Prasad*.

Also see S. 48 Note 1.

8. ('08) 30 All 271 (272): 5 All L Jour 262 (DB), *Secretary of State v. Basharat-Ullah* (1862) 54 E R 1037 (1039, 1040): 31 Beav 1 (8), *Re Ward*. (Where a solicitor or a pleader for a party undertakes to pay stamp duty

and penalty and fails to do it, it is the solicitor or the pleader who must make good the loss occasioned by his failure.)

9. ('69) 6 Bom H C R (AC) 95 (96) (DB), *Balaji Mahadeo v. Krishnaji*. (Where a document contained two distinct contracts requiring separate stamp and the whole was impressed with one insufficient stamp, it was held that this stamp might be taken into account in making up the aggregate of the stamps required.)

10. ('09) 2 Ind Cas 481 (484) (FB) (Mad), *Marie Jacob Rodriguez v. Peter Fernandez*. ('92) 15 Mad 259 (261) (SB), *Reference under Stamp Act, S. 50*. (A release for Rs. 28 and chargeable at annas 4 under Art. 54 (a) and 13 of Sch. I of Act I of 1879 was written on a plain paper and a one anna adhesive stamp was affixed. Question was whether the stamp of one anna could be taken into account in making up the deficiency. Held, as the adhesive stamp was not the proper stamp, the instrument should be treated as not stamped and hence the one anna stamp could not be taken into consideration—8 Mad 87 followed—Dissented in AIR 1922 Low Bur 27: 11 Low Bur Rul 316.)

('33) Mad S M page 86. (Citing, B. P. 2811-R., Mis., 12th December 1903.)

[See also ('76) 1876 Pun Re No. 26, page 42 (43) (FB), *Cheyn Sukh Das v. Musa*.]

[But see ('22) 9 AIR 1922 Low Bur 27 (28): 11 Low Bur Rul 316: 67 Ind Cas 640, *Collector of Rangoon v. Abdul Rahman Sarkar*. (8 Mad 87 and 15 Mad 259 not followed.)]

11. ('09) 2 Ind Cas 481 (484) (FB) (Mad), *Marie Jacob Rodriguez v. Peter Fernandez*.



in order to enable the purchaser to avoid the penalty under this section.<sup>12</sup>

The proviso expressly authorises the *admission in evidence* of a document on payment of penalty. It is conceived that this includes the power to "act on" the document so admitted (e. g., passing a decree on a bond).<sup>13</sup>

A clerk cannot admit a document in evidence; that is a task reserved for the Court.<sup>14</sup>

The penalty under this proviso is *ten times* the amount of deficit duty or Rs. 5 whichever is more. Unlike the Collector under S. 40 (1) (b) the Court has no discretion to require the payment of a less amount as penalty.<sup>15</sup>

Where the suits have already been disposed of and the decrees signed and sealed the provisions of this section are wholly inapplicable and the Court cannot levy the deficient stamp duty and penalty on any instrument admitted in evidence.<sup>16</sup>

**19. Promissory note.**—A promissory note is one of the instruments excepted under Proviso (a). So, a promissory note not duly stamped is *absolutely* inadmissible in evidence, and cannot be admitted even on payment of the deficit duty with penalty.<sup>1</sup>

The *amount* of duty which is chargeable on a promissory note is not a material factor in determining the admissibility of a promissory note not duly stamped. Even if the duty payable on a promissory note is *more than* one anna the note will be inadmissible in evidence if it is not duly stamped.<sup>1a</sup> Similarly, although a promissory note payable on demand is liable to duty as a "bond," it cannot be treated as a "bond" for the purposes of this section and must be held to be inadmissible even on payment of penalty.<sup>2</sup>

A receipt is not a promissory note though it is coupled with a *promise* to pay the money acknowledged to have been received. Hence such an instrument can be received in evidence on payment of penalty.<sup>3</sup> (See Note 21.) For a full discussion of what will constitute a promissory note see Notes on S. 2 (22).

12. ('85) 9 Bom 526 (527) (DB), *Nandram Motiram v. Kacha Bhav*.

[See however, ('30) 17 AIR 1930 Bom 392 (394): 128 Ind Cas 31 (FB), *Collector of Ahmednagar v. Rambhau*. (Where a sale certificate issued to the purchaser has only four annas stamp whereas it should have eight annas stamp, the Court can give another certificate or the purchaser himself may apply under S. 41 to the Collector asking for the mistake to be rectified.)]

Also see Art. 18 Note 4.

13. See ('21) 8 AIR 1921 Cal 613 (614): 77 Ind Cas 845 (DB), *Ranglal Kalooram v. Kedar Nath Kesrimal*. (Section 35 seems to imply that the instrument which is referred to in the section is one which in the first instance is to be received in evidence before it can be acted upon.)

14. ('22) 9 AIR 1922 Lah 354 (354): 66 Ind Cas 153, *Rahim Baksh v. Mohammed Ayub*.

15. See ('33) Mad S M p. 41. (Citing, B. P. 62-R., Mis., 17th March 1925—There is a difference in the wording of sections 35 (a) and 40 (1) (b) and the meaning of section 35 (a) has been judicially interpreted and held to be ten times duty plus duty that should

be collected.)

16. ('27) 14 AIR 1927 Cal 472 (473): 54 Cal 445: 100 I. O. 630 (DB), *Khetra Mohan v. Jamini Kanta*.

#### Section 35—NOTE 19

1. See ('75) 24 Suth W R 88 (90) (DB), *Prosunno Nath Lahiree v. Tripoora Sonduree*. (Where a document was in the nature of a promissory note which was not stamped, it was held that even if there was no intention of the parties to evade the stamp duty, it could not be admitted in evidence on payment of stamp duty and penalty under S. 20 of Act of 1869 by reason of Ss. 19 and 28 of the same Act.)

1a. ('80) 1880 Bom P J 333 (SB), *Hiralal v. Kalidas*.

('70) 7 Bom H C R (OO) 180 (183), *Dosabhai Kavasji v. Kherbadji Hormasji*.

('74) 7 Mad H C R 361 (363) (DB), *Chinna Perumal v. Annammal*.

2. ('45) 32 AIR 1945 Mad 42 (42): (219) Ind Cas 262, *Alamelu Ammal v. Rangai Gounder*.

3. ('36) 23 AIR 1936 P O 171 (174): 63 Ind App 279: 17 Lah 557: 162 Ind Cas 454 (PO), *Mahomed Akbar Khan v. Attar Singh*. Also see S. 2 (22) Note 10.



Suppose an instrument was executed while a previous Act was in force and constituted a promissory note under that Act. Suppose further that under the Act in force at the time when the instrument is sought to be admitted in evidence, the instrument would *not* be a promissory note. It has been held in the cases noted below<sup>4</sup> that in such a case if the instrument was not only duly stamped as a promissory note under the prior Act, it cannot be admitted in evidence under the later Act also and must be treated as a promissory note even for the purpose of its admissibility in evidence. It is submitted with respect that the decisions are not correct. The definition in the prior Act is material only for the purpose of determining if the instrument is duly stamped. If, under the prior Act, the instrument is not duly stamped, the question of its *admissibility* in evidence must be determined with reference to the Act in force at the time when the instrument is sought to be admitted in evidence.<sup>5</sup> (See Note 1 on section 2 (6).)

An instrument varying the terms of a promissory note is itself not a promissory note.<sup>6</sup>

But where a promissory note *itself* is altered in a material respect, the altered instrument will have to be again duly stamped as a *promissory note* and if it is not so stamped, it is not admissible in evidence on payment of penalty.<sup>7</sup>

As to special provisions relating to promissory notes executed between 1-10-1923 and 31-3-1924 and between 1-10-1923 and 4-1-1925 see the Indian (Specified Instruments) Stamp Act, 1924 and the Promissory Notes (Stamp) Act, 1926, given in Appendix J and also considered in Note 9 on S. 10.

**20. Bill of exchange.**—A bill of exchange is one of the three instruments excepted under Proviso (a). Hence, a bill of exchange which is not duly stamped cannot be admitted in evidence even on payment of the deficit duty and penalty.<sup>1</sup>

**21. Instrument chargeable with duty of one anna or half an anna.**—Instruments chargeable with a duty of one anna or half an anna are also excepted under Proviso (a) to this section. Hence, such instruments, if not duly stamped, are totally inadmissible and cannot be admitted in evidence even on payment of duty

4. ('07) 9 Bom L R 1034 (1039, 1040), *R. D. Sethna v. Mirza Mahomed Shirazi*.

('81) 3 Mad 251 (253) (DB), *Narayanan Chetti v. Karuppathan*. (A document, executed when the Act of 1869 was in force, and coming under the definition of promissory note, if it is not duly stamped according to that Act, cannot be admitted in evidence on the ground that it is a bond within the meaning of the Act of 1879, by the payment of penalty.)

Also see Note 4.

5. See ('73) 1873 Bom P J 112 (DB), *Vinayak v. Mahadaji*. (Admissibility or otherwise depends on law in force at place and time where and when instrument is sought to be admitted in evidence.)

6. ('36) 14 Rang 29 (40) (DB), *Joharmal Beharilal v. R. M. P. M. Chettyar Firm*. (Where after the execution of a promissory note certain additional words are written on the same paper with the consent of the parties and such words amount to a written agreement varying its terms, the agreement may be proved, if it is not itself a promissory

note, upon payment of the deficit stamp and the penalty imposed, and the agreement is binding upon the parties thereto. If the additional words are merely a memorandum for purposes of record of the terms of an oral agreement which varied the terms of the promissory note they are of no effect, for the oral agreement cannot be proved. In any event, the validity and admissibility of the promissory note is not affected.)

7. ('36) 14 Rang 29 (40) (DB), *Joharmal Beharilal v. R. M. P. M. Chettyar Firm*.

#### Section 35—NOTE 20

1. See ('79) 4 Cal 259 (260): 2 Cal L Rep 409, *Mathoor Mohun Roy v. Peary Mohun Shaw*. (Case under Act of 1869—Where a bill of exchange for the sum of Rs. 1000, drawn, accepted, and endorsed is insufficiently stamped, it is not receivable in evidence in a suit on the note, even on payment of penalty.)

('70) 5 Mad H C R 391 (401) (DB), *Mahomed Rahmatulla v. Ward*. (Case under Act of 1862.)



and penalty.<sup>1</sup> Thus, an acknowledgment of a debt stampable with one anna under Art. 1, which is not duly stamped, is not admissible in evidence even on payment of penalty.<sup>2</sup> But where though the instrument contains an acknowledgment of a debt it is not covered by Art. 1, it will, if not duly stamped, be admissible on payment of penalty. Thus, in the undermentioned cases<sup>3</sup> it was held that the instrument was not covered by Art. 1 and so was admissible in evidence on payment of penalty. In the undermentioned cases<sup>4</sup> the document was held to be covered by Art. 1. As to what instruments will come under Art. 1, see Notes on that Article.

Although a "receipt" is chargeable with a duty of one anna, it is admissible in evidence on payment of penalty. Special provision is made for this under Proviso (b). (See Note 24.)

For instances of instruments chargeable with a duty of half an anna, see Sch. I, Article 47.

#### Section 35—NOTE 21

1. ('82) 1882 Bom P J 29, *Sakalchand v. Gulabchand*.  
(94) 1894 Pun Re No. 69 p. 229 (231) (DB), *Damodar Das v. Major Doran*. (Before Act V of 1927, cheques were chargeable with duty of one anna and if not stamped they were inadmissible in evidence.)
2. ('33) 20 AIR 1933 All 577 (579): 146 Ind Cas 882, *Bindesari Prasad v. Ram Tapesha Singh*.  
(23) 10 AIR 1923 All 297 (297, 298): 45 All 374: 71 Ind Cas 1027 (DB), *Ramdas v. Inayatullah*.  
(82) 8 Cal 282 (283) (DB), *Binga Ram v. Rajmohun Roy*.  
Also see S. 2 (23) Note 20 and Art. 1 Note 12.
3. ('33) 20 AIR 1933 All 179 (180): 54 All 761: 142 Ind Cas 688 (DB), *Ram Prasad v. Sheo Bakseh*, (Before the previous loans were time barred, a *sarkhat* was executed by the debtor for the money lent before; but it was stated that money lent had been paid in cash, and the debtor agreed to pay interest. It was not stamped.—Held that though it might have been an acknowledgment, it was the intention of the parties that the *sarkhat* should be a fresh transaction, that the document could be treated as an agreement which was admissible in evidence on payment of the stamp duty and penalty.)  
(38) 25 AIR 1938 Lah 511 (512): 178 Ind Cas 197, *Duli Chand Moidhan v. Panthi*. (Balance struck in account book of creditor followed by statement signed by debtor that certain amount is still due—Document is agreement and not acknowledgment—Document although not duly stamped is admissible in evidence after payment of penalty.)  
(31) 18 AIR 1931 Lah 631 (631): 132 Ind Cas 881 (DB), *Pahlad v. Shib Lal*. (Unconditional acknowledgment, if not properly stamped, is admissible in evidence on payment of proper stamp duty. But see AIR

- 1934 Nag 273: 31 Nag LR 105.)  
(30) 17 AIR 1930 Lah 177 (178): 119 Ind Cas 417, *Ram Ditta Mal Ram Dhan v. Kesar Das*. (An unconditional acknowledgment implies a promise to pay and such acknowledgment if unstamped is admissible in evidence on payment of requisite penalty, as it is not an instrument liable to a stamp duty of one anna. (See Art. 1)—33 Cal 1047: 2 Nag LR 130: 33 Ind App 165 (P C) relied on.)  
(38) 25 AIR 1938 Nag 464 (464): 177 Ind Cas 889, *Narbada Prasad v. Mt. Sunki*. (Acknowledgment containing express promise to pay—Sch. I Art. 1 not applicable.)  
[See ('26) 92 Ind Cas 1046 (1046) (Mad), *Rama Swami Aiyangar v. T. Raghava Aiyangar*. (Whether an acknowledgment of a debt was executed in order to supply evidence of such debt or was a mere note or extract of accounts cannot be decided on the terms of document alone. Therefore, if such document is unstamped it cannot be held to be inadmissible in evidence without taking oral evidence as to the purpose for which it was executed.)
4. ('23) 10 AIR 1923 All 297 (297, 298): 45 All 374: 71 Ind Cas 1027 (DB), *Ramdas v. Inayatullah*. (Where a document, written in the form of a letter on a printed form in a book kept by plaintiff, acknowledged the existence of a certain debt and from the way it was kept it appeared that the acknowledgment was made in order to supply evidence of the debt, held, that it required a stamp. Such a document, if unstamped, could not be used in evidence.)  
(34) 21 AIR 1934 Nag 273 (274): 31 Nag LR 105: 153 Ind Cas 255, *Ramchandra Bachhraj v. Muka Gujan*. (Express promise to pay or stipulation to pay interest is necessary for bringing acknowledgment within proviso to Art. 1—Implied promise to pay is not sufficient—If acknowledgment unstamped, it cannot be admitted under S. 35. But see AIR 1931 Lah 631 and AIR 1930 Lah 177.)



22. “Subject to all just exceptions.”—Proviso (a), under which the Court is required to admit unstamped or insufficiently stamped documents on payment of the deficit duty and penalty, is expressly made “subject to all just exceptions.”

Decisions are not uniform as to the exact meaning of the phrase “subject to all just exceptions.” The Allahabad and Madras High Courts have held in the cases noted below<sup>1</sup> that these words do not give any general discretion to the Court as to the admission of a document but mean those exceptions in which a document is rendered inadmissible by the provisions of any other statute.

According to the Nagpur High Court, however, in the undermentioned decision,<sup>2</sup> the Court would seem to have a *discretion* in admitting or rejecting documents under this section. In that case, the Court held as follows: The omission to get a document which is executed out of British India and stamped with a foreign stamp, stamped in British India is not any “just exception” contemplated by the proviso. The phrase is somewhat vague and means “some valid objection to the document being stamped other than a mere objection under the Stamp Act, e. g., some fraud or intention on the part of the holder of the document to evade the duty or again the document itself might be a suspicious one, or a forged one in the opinion of the Court.”

It is submitted that the intention of the holder of the instrument to evade stamp duty will not be a “just exception” within the meaning of Proviso (a) and cannot be made the ground of a refusal to admit a document under this proviso which makes it obligatory on the part of the Court, except in the three cases specified therein, to admit documents not duly stamped, on payment of the deficit duty and penalty. (See Note 18.)

See also the undermentioned ruling of the Madras Board of Revenue.<sup>3</sup>

23. This section and Section 26—See S. 26 Note 16.

24. Proviso (b).—Under this proviso, an unstamped receipt is admissible in evidence against the person giving it, on payment of a *penalty* of one rupee.<sup>1</sup> The person tendering the receipt in evidence cannot be required to pay the *duty* on it in addition to the penalty of Rupee 1.<sup>2</sup> Hence, when a receipt is admitted in evidence under this proviso it is not necessary that the receipt should be endorsed in the manner provided for in S. 42.<sup>3</sup>

25. Proviso (c).—This proviso applies to cases where a contract or agreement is *effected* by correspondence. Where the letters do not constitute the agreement between the parties or the memorandum of such agreement, and the agreement constituting the cause of action is only oral and the correspondence between the

#### Section 35—NOTE 22

1. (239) 26 AIR 1939 All 515 (516): ILR (1939) All 546: 183 Ind Cas 714 (DB), *Shiva Prasad v. Sambhu Nath*.

(25) 48 Mad 631 (635) (DB), *Bhimasena Rao v. Venugopal Mudali*. (The words cannot be construed as giving the Judge a general discretion as to the admission of a document in circumstances where he feels any doubt as to what the proper stamp duty was.)

Also see S. 38 Note 2.

2. (35) 22 AIR 1935 Nag 54 (55): 31 Nag L R 162: 156 I. C. 213, *Kedarmal Raghunath v. Ratiram*.

3. (33) Mad S M p. 41. (Citing, B. Ps. 1380, 18th June 1886; 1472, Mis. 27th November 1914—A, the first wife of B,

presented for registration a maintenance deed. The document was insufficiently stamped, and the Collector ordered the payment of the deficient duty and penalty. B when called upon to pay the amount, paid it under protest that the document was a forgery—Held, that a man could not be called upon to validate a document which he declares a forgery. The deficient duty and penalty collected were refunded.)

#### Section 35—NOTE 24

1. (32) Ind Rul 1932 Lah 624 (624), *Ratanlal v. Dula*.

2. (02) 24 All 374 (376): 1902 All W N 72 (S B), *Reference under Stamp Act, S. 57*.

3. (02) 24 All 374 (376): 1902 All W N 72 (S B), *Reference under Stamp Act, S. 57*.



parties is merely relied on as *evidence* of such agreement, the letters are admissible in evidence though none of them is stamped.<sup>1</sup>

Where a correspondence contains a complete agreement independently of a subsequent draft and engrossed lease which the lessor refuses to execute, the latter cannot be treated as part of the correspondence and consequently the correspondence must be stamped and penalty paid before it can be admitted in evidence.<sup>2</sup>

See also the cases noted below.<sup>3</sup>

**26. Proviso (d).**—The prohibition contained in the first part of S. 35 does not apply to proceedings in a criminal Court, except proceedings under Chap. XII or Chap. XXXVI of the Criminal Procedure Code. Hence, except in the proceedings under the above chapters, a Magistrate is not justified in excluding from consideration a document on the ground of its not being duly stamped.<sup>1</sup>

**27. Document bearing Collector's certificate—Proviso (e).**—Under Proviso (e), an instrument which bears the certificate of the Collector as provided by S. 32 or any other provision of this Act shall be admitted in evidence though it may not actually be duly stamped.<sup>1</sup>

**28. Delivery of signed and stamped blank paper.**—If a person chooses to entrust to his own man of business a blank paper duly stamped as a bond and signed and sealed by himself in order that the instrument may be duly drawn up and money obtained upon it, from persons who have no reason to doubt the *bona fides* of the transaction, it must be taken in the absence of any evidence to the contrary, that the bond was drawn up in accordance with the obligor's wishes and instructions.<sup>1</sup>

Under S. 20 of the Negotiable Instruments Act, when a person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments and either wholly blank or having written thereon an incomplete negotiable

#### Section 35—NOTE 25

1. See ('90) 13 Mad 255 (264) (DB), *Rainier v. Gould*. (Case under Act of 1879 which did not contain such a proviso, holding that an agreement contained in a series of letters need not be stamped—See also Note 4 on Art. 5.)
2. ('90) 17 Cal 548 (556), *Boyd v. Kreig*.
3. (1823) 130 E R 79 (81): 1 L J (OS) C P 52, *Stead v. Liddard*. (A, by a letter in which the consideration of the transaction sufficiently appeared, entered into an agreement with B, and B became party to the engagement by writing a few lines at the bottom of a copy of A's letter. C became guarantee for B to A by an endorsement on the back of this copy of A's letter in which endorsement reference was made to the terms of agreement on the other side—*Held*, in an action on the guarantee, that only one stamp was required on this paper, and the reference in the endorsement to the terms of the agreement was a sufficient memorandum of the consideration for the guarantee within the statute of frauds. (1834) 149 E R 1145 (1146): 4 L J Ex 28, *Peate v. Dicken*. (Where an agreement refers to another document, so that the two papers in fact form only one agreement, it is sufficient if one of the papers only bears an agreement stamp.) (1818) 171 E R 670 (671): 2 Stark 351 (352,

353), *Orford v. Cole*. (Contract of marriage—No stamp duty necessary.)

#### Section 35—NOTE 26

1. ('16) 3 AIR 1916 Cal 310 (311): 29 Ind Cas 671 (DB), *Jagannath Rahatgir v. Deokinandan*.

#### Section 35—NOTE 27

1. ('81) 3 All 115 (117) (DB), *Girdhari Das v. Jagan Nath*. (A promissory note, not payable on demand, executed on unstamped paper was brought to the Collector under S. 39 of the Act of 1869 (now Ss. 31 and 32) for adjudication as to proper stamp. The Collector upon the payments provided in that section having been made, made the endorsement thereon provided in that section—*Held* that the irregularity of the Collector in making such endorsement did not render the promissory not inadmissible in evidence.

NOTE.—The instrument was regarded as an agreement by the Collector. ('29) 16 AIR 1929 Nag 272 (272): 119 Ind Cas 680, *Ajodhya Prasad v. Parashram*. (Where a document purports to be a deed of adoption but is in reality a deed of gift and is stamped as an authority to adopt, if the Collector validates and certifies it under S. 42, it is admissible in evidence.)

#### Section 35—NOTE 28

1. ('80) 5 Cal 39 (42): 4 Ind Jur 453 (DB), *Wahidunnessa v. Surgadass*.



instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete upon it a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp. The estoppel arising from signature under S. 20 can only be applied to the paper or papers covered by such signature. The delivery of a hundi paper signed and left blank cannot give authority to attach to it other unsigned stamps. Where several stamps have been delivered separately, no authority is given to stick them together for a single instrument.<sup>2</sup>

See also the undermentioned cases.<sup>3</sup>

**29. Power of appellate or revisional Court.**—Where a document not duly stamped has been improperly admitted in evidence, by the trial Court its action cannot be questioned in appeal or revision. (See S. 36.) But where a document has been improperly rejected, the appellate Court can interfere and direct the document to be received in evidence. See also Note 18 and Notes on S. 36.

Where a document is admitted in evidence on payment of duty and penalty under this section, the decision cannot be the subject-matter of revision by the High Court except as provided in S. 61.<sup>1</sup>

**30. Party succeeding on stamp objection—Right to costs.**—A party winning an action merely on the strength of a stamp objection may be deprived of his costs, as in such a case his success would not be on merits.<sup>1</sup>

See also Note 8 on section 33.

**31. Recovery of stamp duty.**—See Notes on Sections 29, 40, 44 and 48.

**\*36. Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.**

#### SYNOPSIS

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| <ol style="list-style-type: none"> <li>1. Scope of the section.</li> <li>2. "Where an instrument has been admitted in evidence."</li> <li>3. "Such admission shall not be called in question."</li> <li>4. "Same suit or proceeding."</li> <li>5. Objection in same Court.</li> <li>6. Objection before appellate Court.</li> </ol> | <ol style="list-style-type: none"> <li>7. Revision.</li> <li>8. Document not admissible even on payment of penalty.</li> <li>9. Unstamped partition decree.</li> <li>10. Document rejected by lower Court—Power of appellate Court.</li> <li>11. Admission of secondary evidence.</li> <li>12. Arbitration proceedings.</li> </ol> |
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**1. Scope of the section.**—Under the Civil Procedure Code, O. 13, R. 3, the Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible. But this provision must be read subject to this section which is mandatory.<sup>1</sup> Hence, after a document has once been admitted in evidence, its admissibility cannot be questioned on the ground that it is not duly stamped.<sup>2</sup>

\* [1879—S. 34, Prov. (3).]

2. '20) 7 AIR 1920 Nag 45 (47): 54 Ind Cas 3, *Gokuldas v. Radhakisan*.
3. (1853) 22 L J O P 187 (189): 1 W R (Eng) 437: 21 L T (OS) 185: 94 R R 862, *Montague v. Perkins*. (A giving B for value his acceptance in blank on a 5s. stamp—B filling in his own name as drawer—Suit by innocent indorsee for value, against A—A bound by his acceptance.) (1813) 105 E R 316 (316): 14 R R 596, *Cruchley v. Clarence*. (Bill of exchange issued in blank without name of payee—Bona fide holder is authorised to insert his name.

Section 35—NOTE 29.

('45) 32 AIR 1945 Nag 178 (179): ILR (1945) Nag 928, *Lokmat Motor Service v. New Lokmat Lodging*.

Section 35—NOTE 30

1. (1911) 1 K B 137 (144): 80 L J K B 236: 103 L T 767, *Genforsikrings v. Da Costa*. (Suit on contract of marine insurance—Suit dismissed as there was no stamped policy—Defendant was refused his costs.) (1898) 1 Q B 829 (836), *Home Marine Insurance Co. v. Smith*. (Do.—Affirmed in (1898) 2 Q B 351.)



2. "Where an instrument has been admitted in evidence."—In order that this section may apply, the instrument must have been admitted in evidence. The expression "admitted in evidence" means that the document must have been let in as part of the evidence.<sup>1</sup> This must be a conscious, judicial act of the Court. Merely because a document has been marked as an exhibit it will not necessarily have been "admitted in evidence."<sup>2</sup> Thus, where the Court postpones the decision of the question of admissibility of the document, the mere fact that in the meanwhile the document has been tentatively marked as an exhibit will not amount to "admitting" the document in evidence.<sup>3</sup>

Section 36—NOTE 1

1. (37) 24 AIR 1937 Mad 431 (432): 169 Ind Cas 641, *Satyavati v. Pallaya*.
2. (29) 16 AIR 1929 P C 279 (282): 56 Ind App 379: 7 Rang 624: 120 Ind Cas 645 (P C), *Ma Pwa May v. Chettiar Firm*.  
(39) 26 AIR 1939 Nag 220 (221): I L R (1940) Nag 671: 183 Ind Cas 509 (DB), *Ramchandra Krishnaji v. Zolba Balaji*. (Where document not duly stamped has once been admitted in evidence, the Court should proceed as though it were properly stamped).  
(28) 15 AIR 1928 Pat 155 (156): 6 Pat 765: 106 Ind Cas 653 (DB), *Jagdeep Singh v. Firangi Singh*.  
[See (1860) 29 L J C P 310 (312): 1 L T (NS) 67: 121 R R 472: 141 E R 804, *Robinson v. Vernon (Lord)* (The objection to the admissibility of a document in evidence for want of stamp ought to be taken at the earliest possible opportunity—Where, therefore, the plaintiffs, who were suing as executors had put in evidence probate of the will of their testator, and the same had been read without objection, it was held that the defendants could not afterward, by giving extrinsic evidence of the value of the estate, object to the admissibility of the probate for want of sufficient stamp).  
[See also (1837) 112 E R 414 (417): 6 L J K B 209, *Field v. Woods*. (Where a document produced on a trial would, from some defect, be inadmissible if objected to, the practice in general is, that, if such document has been put in and read, the objection cannot afterwards be taken—But where the defect requires extrinsic evidence to show it, as when a cheque has been post-dated, the instrument is to be read, and the ground of objection afterwards proved as part of the defendant's case.)]

Section 36—NOTE 2

1. † ('10) 6 Ind Cas 903 (904) (DB) (Bom), *Chunilal Tulsiram v. Mulabai*.
2. ('35) 22 AIR 1935 Mad 888 (889, 890): 159 Ind Cas 23, *Abdul Wahab Saheb v. Kanaka Anjaneyalu*. (An unstamped hundi exhibited before a Commissioner appointed by the Court was given only an identifying mark and no more. The Commissioner had not considered, when it was exhibited, as to its admissibility in evidence, much less was there any objection raised as to its ad-

missibility. An issue as to its admissibility was pending before the Court. Held that it could not be inferred in law that there was an admission of the hundi in evidence by the Commissioner within the meaning of S. 36, Stamp Act.)

- (28) 15 AIR 1928 Rang 263 (264): 114 Ind Cas 289, *Maung Myo v. Ma Myin*. (Where a promissory note was filed with the plaint and was sealed with the exhibit-seal and marked as exhibit, but was not tendered or identified in the course of evidence, held the instrument was not admitted and it was perfectly open to the defendant to raise the question of admissibility subsequently.)
- (29) 16 AIR 1929 Mad 522 (522): 53 Mad 137: 120 Ind Cas 879 (DB), *Attili Venkanna v. Parasuram Byas*.
3. ('49) 36 AIR 1949 Mad 300 (300, 301), *Sri Yerri Swami v. Vannurappa*. (Suit on promissory notes not properly stamped. Objection as to admissibility raised in written statement and issue framed—Court without deciding issue as to admissibility marking pro-notes as exhibit—Suit dismissal on preliminary point—Decision reversed in appeal and case remanded—Objection as to admissibility again raised—Pro-notes held could not be said to have been admitted in evidence—Objection was not barred by S. 36.)  
(10) 6 Ind Cas 903 (904) (DB) (Bom), *Chunilal Tulsiram v. Mulabai*.  
(33) 20 AIR 1933 Lah 148 (149): 145 Ind Cas 154 (DB), *Khazan Shah v. Atta Ullah*.  
[See ('19) 6 AIR 1919 Nag 141 (143): 50 Ind Cas 781, *Sitaram v. Thakurdas*. (Civil P. C. O. 13 Rr. 3 and 4 show that a copy of an entry in an account book can be tentatively put in evidence pending final decision whether the original entry is admissible or not.)  
[See also ('12) 16 Ind Cas 834 (835) (DB) (Lah), *Sundar Das v. Peoples Bank of India, Ltd., (Rawalpindi Branch)*. (Where a document has been marked as an exhibit without any note on it to the effect that it has been admitted in evidence, and there is nothing to show that its treatment as evidence in the case was otherwise than tentative, objection can be raised as to its admissibility at any later stage of the suit, on the ground that it was not properly stamped: 12 mad L Jour 351 distinguished.)]



In some decisions the view has been expressed that an instrument cannot be considered as "admitted in evidence" within the meaning of this section unless the Court has admitted the document after applying its mind consciously to the question whether the document was admissible or not.<sup>4</sup> This view has been dissented from in the cases noted below<sup>5</sup> and, it is submitted with respect, is not correct. Under this section, it matters nothing whether the document was admitted wrongly or rightly or admitted without objection or after hearing or without hearing such

<sup>4</sup> ('10) 6 Ind Cas 903 (904) (DB) (Bom), *Chunilal Tulsiram v. Mulabai*. (It may of course happen, in some cases, that a document which is not admissible for want of stamp is allowed by the Court to go in, the question of the stamp escaping its notice as well as the attention of the parties—In such cases the admission is a judicial determination of the question, because the Court let in the document on its view that there was nothing against its admission.)

('33) 20 AIR 1933 Lah 271 (273) : 142 Ind Cas 535, *Jagan Nath v. Mt. Chauhi*. (An insufficiently stamped document was filed and some evidence was taken on it and it was marked as an exhibit for reference, but the endorsement required by O. 13, R. 4 was not made. The next day the opposite party objected to the admissibility of the document and the objection was upheld—*Held* that there was no judicial determination of the question of the admissibility of the document till the objection was raised and the words "admitted in evidence" in S. 36, Stamp Act, must be taken to mean letting in as a part of the evidence as a result of judicial determination of the question whether it can be admitted in evidence or not for want of stamp—Hence the Court could reject the document under O. 13 R. 3—6 Ind Cas 903 explained; 16 Ind Cas 834; AIR 1919 Nag 141 and AIR 1929 Mad 522 : 53 Mad 137 relied on.)

('35) 22 AIR 1935 Mad 888 (890) : 159 Ind Cas 23, *Abdul Wahab Saheb v. Kanaka Anjaneyalu*.

('33) 20 AIR 1933 Mad 781 (782) : 147 Ind Cas 369, *Sadasivier Krishnier v. Meenakshi Iyer*. (Suit on promissory note after hearing of case had been closed, Judge's attention drawn to insufficiency of stamp and Judge holding that he had not applied his mind to question of admissibility, rejecting document and dismissing suit—*Held* suit was rightly dismissed.)

('29) 16 AIR 1929 Mad 522 (523) : 53 Mad 137 : 120 Ind Cas 879 (DB), *Attili Venkanna v. Parasuram Byas*. (A document, although endorsed according to O. 13, R. 4, cannot be deemed to be admitted in evidence, if that endorsement is made without the Judge having applied his mind to its admissibility, and so can be rejected in spite of such endorsement—Dissented from in AIR 1939 All

588 : I L R (1939) All 846 ; Distinguished in AIR 1938 Mad 938.)

('19) 6 AIR 1919 Nag 141 (143) : 50 Ind Cas 781, *Sitaram v. Thakurdas*. ("At any stage of the same suit" in S. 36 mean at a stage subsequent to a judicial determination as to the admissibility of the instrument—Dissented from, in AIR 1939 All 588 ; I L R (1939) All 846.)

('28) 15 AIR 1928 Rang 263 (264) : 114 Ind Cas 289, *Maung Myo v. Ma Myin*.

5. ('39) 26 AIR 1939 All 588 (590) : I L R (1939) All 846 : 184 Ind Cas 687 (DB), *M. K. Lodhi v. Zia-ul-haq*. (There is nothing in the section to warrant the conclusion that the section has application only to cases in which the Court has admitted the document after "consciously" applying its mind to the question of admissibility. When a Court admits a document in evidence it does or at least is deemed to act judicially and this judicial act of admitting the document in evidence can at no subsequent stage of the suit be set at naught on the ground that the document was not duly stamped. A I R 1919 Nag 141 ; A I R 1929 Mad 522 : 53 Mad 137 and A I R 1933 Lah 271, dissented from ; A I R 1930 Cal 577 and AIR 1923 Pat 404 followed.)

\*('38) 25 AIR 1938 Mad 938 (939) : 179 Ind Cas 829, *Boppana Prakasam v. Nagobushanam*. (If an instrument is let in whether after deciding the objection to its admissibility or not, it must be held to have been admitted in evidence within the meaning of S. 36 of the Stamp Act, and its admissibility cannot thereafter be questioned. Where the Judge endorses on the back of the document that it is insufficiently stamped and it is allowed to go in, and the same bears a rubber stamp with the initials of the Judge, it must be held to have been admitted in evidence.)

('37) 24 AIR 1937 Pat 73 (74, 75) : 16 Pat 84 : 167 Ind Cas 152 (DB), *Krishna Kumar Chatterji v. Jagpati Kuer*. (Instrument marked as exhibit and bearing endorsement of admission—Subsequent discovery that the stamps had not been cancelled—Court cannot reject the document.)

[See also ('37) 24 AIR 1937 Mad 431 (431) : 169 Ind Cas 641, *Satyavati v. Pallaya*. (Where a document is objected to on the ground that it was unregistered and that it was not sufficiently stamped, but the



objection.<sup>6</sup> To hold that unless the Court has applied its mind to the question of admissibility from the point of view of the stamp-law, a document cannot be held to have been admitted in evidence, involves reading into the section the words "after judicially considering the question of sufficiency of stamp" after the words "admitted in evidence."<sup>7</sup>

The mere production and presentation of a document in Court are not equivalent to its admission in evidence.<sup>8</sup>

Where a Judge has let in a document subject to the payment of duty and penalty, the document must be deemed to have been "admitted in evidence" although the full stamp duty and penalty have not yet been paid, where there is no suggestion that the party was not prepared to pay the duty and penalty.<sup>9</sup>

In order that a document may be regarded as admitted in evidence, it is not necessary that there must be a separate written order deciding the admissibility of the document.<sup>10</sup>

Where a Judge has, as a fact, admitted a document in evidence, the document must be treated as "admitted in evidence" although the Judge has made a note on the instrument that the stamp is not sufficient.<sup>11</sup>

Where an instrument tendered in evidence had on it an office note with the number of the exhibit and the word "Judge" written below for the Judge's signature, but the Judge had not signed or initialled it, it was held that the instrument could not be said to have been "admitted in evidence."<sup>12</sup>

Court overrules the objection and admits it in evidence, without specifically stating whether both the grounds of objection or only one of them, viz., that relating to non-registratio, is overruled, that is sufficient admission for the purpose of S. 36.

(02) 12 Mad L Jour 351 (353), *Sugappa v. Govindappa*. (Promissory note marked as exhibit and bearing endorsements required to be made on admission of document—Court cannot dismiss suit on ground of note not having been duly stamped.)]

6. ('37) 24 AIR 1937 Pat 73 (74, 75): 16 Pat 84: 167 Ind Cas 152 (DB), *Krishna Kumar Chatterji v. Jagpati Kuer*.

('37) 24 AIR 1937 Mad 431 (431): 169 Ind Cas 641, *Satyavati v. Pallaya*.

('36) 23 AIR 1936 Cal 556 (559): 63 Cal 1098: 167 Ind Cas 713 (DB), *Bhupati Nath Chakravarty v. Basanta Kumari Devi*.

('28) 15 AIR 1928 Pat 155 (156): 6 Pat 765: 106 Ind Cas 653 (DB), *Jagdip Singh v. Firangi Singh*. (The operation of S. 36 of the Stamp Act is not confined to cases where a document has been admitted without objection.)

†('30) 17 AIR 1930 Cal 577 (577): 128 Ind Cas 187 (DB), *Nirod Basini v. Sital Chandra*. [See (1834) 112 ER 414 (415): 7 Ad & El 116n, *Foss v. Wagner*. (A written paper being offered in evidence by plaintiff, on a trial, defendant's counsel desired to see it; before it was handed to him, it was laid before the Judge, and afterwards, while the counsel's attention was accidentally diverted, and before the paper was handed over to him, it was read in evidence—The

Judge at *nisi prius* held that a counsel could not afterwards object to the want of a stamp, and the plaintiff, having obtained a verdict, the Court refused to grant a rule nisi for a new trial, on counsel's statement of the above facts.)]

[See also ('27) 14 AIR 1927 Lah 876 (876): 102 Ind Cas 884, *Attar Singh Sunder Singh v. Mool Chand*. (The section applies even where the document has been admitted on a misreading of its contents.)]

7. ('39) 26 AIR 1939 All 588 (590): 1 L R (1939) All 846: 184 Ind Cas 687 (DB), *M. K. Lodhi v. Zia-ul-haq*.

8. ('22) 9 AIR 1922 Lah 401 (403): 3 Lah 282: 69 Ind Cas 723 (DB), *Muhammad Ayub v. Rahim Bakhsh*.

9. ('23) 10 AIR 1923 Lah 657 (657): 73 Ind Cas 799 (DB), *Brij Raj Saran v. Joti Parshad*.

10. ('29) 16 AIR 1929 Lah 770 (771): 11 Lah 77: 119 Ind Cas 485 (DB), *Gurdas Mal Ram Chand v. Guran Dittamal*. (AIR) 1925 Lah 552 reversed.)

[See however ('12) 16 Ind Cas 834 (835) (DB) (Lah), *Sunder Das v. Peoples Bank of India Ltd. (Rawalpindi Branch)*. (In the absence of a definite order admitting document in evidence, objection could be raised at any stage of the suit to admissibility of document.)]

11. ('38) 25 AIR 1938 Mad 938 (939, 940): 179 Ind Cas 829, *Boppana Prakasam v. Nagabushanam*. (Endorsement on back of instrument that it is insufficiently stamped.



In order that a document may be regarded as "admitted in evidence" it is necessary that the person who has let in the document must have had *authority* to do so.<sup>13</sup>

The section applies though the document admitted is the basis of the suit and not merely a piece of evidence in the suit.<sup>14</sup>

The section applies not only to the admission of a document by the trial Court but also to such admission by the appellate Court.<sup>15</sup>

The section does not apply where the Court has *refused* to admit a document in evidence as being not duly stamped (see Note 10). The section also does not apply where the unduly stamped instrument has not been admitted in evidence but only acted on (see NOTE 9).

It has been held that where only a *portion* of document has been admitted in evidence, the appellate Court will not be precluded from questioning such admission, but that where an instrument has been admitted in its entirety, its admissibility cannot be questioned, even though the lower Court has only relied on a portion of the instrument.<sup>16</sup>

The section applies also to an instrument which was executed while a prior Act was in force and which was not duly stamped according to such Act.<sup>17</sup>

3. "Such admission shall not be called in question."—Where an instrument not duly stamped has been admitted in evidence and a decree has been passed on such instrument, under this section, not only the admission of the document in evidence but also the decree thereon cannot be questioned.<sup>1</sup> The reason is that the decree is only a consequence of the *admission* of the document in evidence. But where an instrument has been merely acted upon without being admitted in evidence, as when an unstamped partition decree is executed, this section does not apply. (See Note 9.)

Where a document has been admitted on payment of deficit duty and penalty and it is objected that higher duty must have been levied, such an objection would be "calling in question" the admission of the document.

12. ('40) 27 AIR 1940 Sind 194 (194) : ILR (1940) Kar 195 : 191 Ind Cas 427 (DB), *Dholandas v. Tahil Ram*.

[See also ('33) 20 AIR 1933 Mad 781 (782) : 147 Ind Cas 369, *Sadasivier v. Meenakshi Iyer*. (Where the attention of the Judge was not drawn till after the case was closed, to the fact that the suit promissory note was insufficiently stamped and the note had only been endorsed by the clerk but not signed or initialled, it cannot be deemed to have been admitted and the Court is not precluded from dismissing the suit.)]

13. ('35) 22 AIR 1935 Mad 888 (889, 890) : 159 Ind Cas 23, *Abdul Wahab Saheb v. Kanaka Anjaneyalu*. (Commissioner was held to have no authority to admit document.)

14. ('34) 21 AIR 1934 Mad 383 (384) : 57 Mad 779 : 150 Ind Cas 51 (DB), *Venkata Reddi v. Hussain Setti*.

('36) 23 AIR 1936 Rang 498 (499) : 166 Ind Cas 116, *U Pan Nyo v. Tint*.

('34) 21 AIR 1934 Mad 700 (700) : 152 Ind Cas 683, *Lakshmappa v. Masud Sahib*.

('44) 31 AIR 1944 Bom 235 (235), 219 Ind Cas 272, *Bhagwandas v. Chhaganlal*.

15. ('23) 10 AIR 1923 Lah 657 (657) : 73 Ind Cas 799 (DB), *Brij Raj Saran v. Joti Prasad*. (Trial Court holding document to be inadmissible—Appellate Court reversing decision and holding document, to be admissible—This is admitting document in evidence.)

('90) 1890 Pun Re No. 139 page 445 (446), *Mangal Sain v. Gobind Das*.

('82) 5 Mad 220 (221) (DB), *Ramasami Chetti v. Ramasami Chetti*.

Also see Note 6.

16. ('38) 25 AIR 1938 All 619 (621) : 178 Ind Cas 578, *Ratanji Bhagwanji v. Prem Shankar*.

17. ('20) 7 AIR 1920 Cal 754 (755) : 59 Ind Cas 3 (DB), *Nilratan Mitra v. Abdul Gofur Gazi*.



4. "Same suit or proceeding."—The section only precludes an objection on the ground of want of due stamp being taken in the "same suit or proceeding." Thus, where a document on which the stamp is not properly cancelled is admitted in an *ex parte* trial, its admissibility can be questioned in a *de novo* trial commenced after the setting aside of the *ex parte* decree.<sup>1</sup>

An appeal under the Letters Patent is a stage of the same suit for purposes of this section.<sup>2</sup>

5. **Objection in same Court.**—The section precludes an objection being raised to the admissibility of a document after it has once been admitted in evidence, whether such objection is raised in the *same Court* or in a superior Court.<sup>1</sup> Thus, where a document not duly stamped has been admitted in evidence and a decree passed in the suit, the Court cannot subsequently require the payment of deficit duty and penalty.<sup>2</sup> Nor can the Court *impound* the document in such a case.<sup>3</sup>

Even where the suit or proceeding is still pending and has not been disposed of the Court cannot entertain any objection as to the admissibility of a document on the ground of want of due stamp, where the document has once been admitted in evidence.<sup>4</sup> In other words, after a Court has once admitted a document in evidence, it cannot reject it as being not duly stamped.<sup>5</sup>

## Section 36—NOTE 3

1. ('44) 31 AIR 1944 Bom 235 (235): 219 Ind Cas 272 *Bhagwandas Totaram v. Chhagan Lal Raichand*. (As pointed out in AIR 1934 Mad 383: 57 Mad 779, S. 36 applies not only to documents admitted in the course of evidence in support of subsidiary points arising in the suit but also to cases where the document in question formed the foundation of the suit—Therefore the argument that although the admissibility of the document cannot be questioned, yet it cannot be acted upon must fail.)
- (34) 21 AIR 1934 Mad 383 (384): 57 Mad 779: 150 Ind Cas 51 (DB), *Venkata Reddi v. Hussain Setti*.
- ('32) 19 AIR 1932 Mad 765 (767): 140 Ind Cas 315, *Algappa Chetti v. Narayanan Chettier*. (The appellate Court cannot say that though it has been marked as an exhibit in the case, it would not look into it and would not make use of it in the appreciation of the evidence or would not allow a decree to be passed on such a document.)
- (36) 23 AIR 1936 Rang 498 (499): 166 Ind Cas 166, *U Pan Nyo v. U Tint*.
- ('16) 3 AIR 1916 Upp Bur 2 (3): 33 Ind Cas 595, *Mi Mi v. Sohan Singh*. ('Admission' includes such action as necessarily follows upon admitting a document in evidence.)
- [See also (34) 21 AIR 1934 Mad 700 (700): 152 Ind Cas 683, *Lakshmappa v. Masud Sahib*. (Section 36 implies that document must have been acted upon.)]

## Section 36—NOTE 4

1. ('12) 16 Ind Cas 96 (97) (Mad), *Solanalai Mudaliar v. Vada Malai Muthiran*. Also see S. 12 Note 8.
2. ('23) 10 AIR 1923 Lah 657 (658): 73 Ind Cas 799 (DB), *Brij Raj Saran v. Joti Parshad*.

## Section 36—NOTE 5

1. ('92) 1892 Bom P J 345 (DB), *Secretary of State v. Byramji Bezanji*.
- (38) 25 AIR 1938 Lah 511 (512): 178 Ind Cas 197, *Dulichand Maidhan v. Panthi*. (Evidence led by plaintiff as to whether document was executed by defendant—Objection by defendant that document was not duly stamped, taken after recording of plaintiff's evidence—Document having been admitted defendant's objection cannot be entertained. A.I.R. 1933 Lah 271 not followed.)
- (02) 12 Mad L Jour 351 (353) (DB), *Sugappa v. Govindappa*. (Suit on promissory note—Promissory note marked as exhibit and endorsements made which are made when a document is admitted in evidence—Suit cannot be dismissed on the ground that the note is not duly stamped.)
- ('41) 28 AIR 1941 Nag 255 (257): 196 Ind Cas 367, *Rambhadoo v. Gurudayal*.
- (38) 178 Ind Cas 338 (338) (DB) (Oudh), *Avadh Singh v. Randhir Singh*.
2. ('27) 14 AIR 1927 Cal 472 (473): 54 Cal 445: 100 I.C. 630 (DB), *Khetra Mohan v. Jamini Kanta*. Also see S. 35 Note 18.
3. ('37) 24 AIR 1937 Mad 763 (764): 174 Ind Cas 20, *Panakala Rao v. Kumaraswami*. (8 Mad 564 (FB), relied on.)
4. ('38) 178 Ind Cas 338 (339,340) (DB) (Oudh), *Avadh Singh v. Randhir Singh*.
5. ('33) 20 AIR 1933 All 821 (821): 56 All 131: 147 Ind Cas 205, *Noor Ahmad v. Irshad Ghaus*. (Court admitting document cannot review its own order of admission.)
- ('15) 2 AIR 1915 Cal 280 (281): 22 Ind Cas 858 (DB), *Sitaram v. Ram Prasad Ram*.
- ('37) 24 AIR 1937 Mad 431 (431): 169 Ind Cas 641, *Satyavati v. Pallaya*.



Where a Judge has admitted a document in evidence his successor cannot question the admissibility of the document on the ground of its being not duly stamped.<sup>6</sup>

**6. Objection before appellate Court.**—An appeal is only a further stage in the same suit or proceeding. Hence, where the lower Court has admitted an instrument in evidence, the appellate Court is precluded by this section from entertaining, except as provided by S. 61, any objection to the admissibility of the document on the ground of its not being duly stamped.<sup>1</sup>

('32) 19 AIR 1932 Mad 693 (696): 139 Ind Cas 486, *Alimane Sahiba v. Subbarayudu*.  
(85) 8 Mad 564 (566) (SB), *Reference under Stamp Act, S. 46.*

('23) 10 AIR 1923 Pat 404 (405, 406): 71 Ind Cas 475, *Dasi Chamar v. Ram Autar Singh*.

6. ('26) 93 Ind Cas 317 (317) (All), *Babu Ram v. Lakhan Singh*.

('89) 13 Bom 449 (457) (FB), *Devachand v. Hirachand Kamaraj*.

#### Section 36—NOTE 6

1. ('47) 34 AIR 1947 Cal 68 (70): 226 Ind Cas 426 (DB), *Ganeshi Lal v. Snehalata Dassi* (Deed admitted without objection as to stamp duty).

('31) 18 AIR 1931 All 302 (302): 131 Ind Cas 135 (DB), *Ratan Singh v. Pirbhu Dayal*.

('84) 1884 All W N 318 (319) (DB), *Wilaiti v. Pir Buksh*.

('27) 14 AIR 1927 Bom 195 (208): 51 Bom 247: 101 I. C. 229 (DB), *Lakmidas & Co. v. Dorab Tata*.

('89) 13 Bom 449 (457) (FB), *Deva Chand v. Hirachand Kamaraj*. (No appeal lies from an order admitting a document in evidence on payment of penalty even though the document is a promissory note and it has been admitted in evidence on payment of stamp and penalty in contravention of S. 35.)  
(89) 13 Bom 493 (495) (D B), *Gurpadapa v. Naro Vithal Kulkarni*.

('89) 1889 Bom P J 265, *Bhaskar v. Prabhakar*.

('42) 29 AIR 1942 Cal 562 (565, 566): 203 Ind Cas 207 (DB), *Bank of Baroda Ltd. v. Punjab National Bank Ltd.*

('40) 71 Cal L Jour 190 (192), *Girish Chandra Sen v. Brajalal Sen*.

('36) 23 AIR 1936 Cal 556 (559): 63 Cal 1098: 167 Ind Cas 713 (D B), *Bhupati Nath v. Basanta Kumari*.

('13) 19 Ind Cas 445 (446) (D B) (All), *Abit Husain v. Asghar Husain*.

('87) 1887 All W N 94 (95), *Hardeo Das v. Parbati*.

('31) 18 AIR 1931 Cal 480 (480): 134 Ind Cas 575 (DB), *Abinash Chandra v. Nagendra Nath*. (Suit on insufficiently stamped promissory note decreed without any objection as to stamp being raised by defendant—Objection as to stamp raised in second appeal disallowed.)

('30) 17 AIR 1930 Cal 577 (577): 128 Ind Cas 187 (DB), *Nirode Basini Mitra v. Sital Chandra Ghatak*.

('26) 13 AIR 1926 Cal 877 (878): 53 Cal 515: 95 Ind Cas 483 (DB), *Joyman Bewa v. Easin*

*Sarkar*.

('19) 6 AIR 1919 Cal 235 (239): 51 Ind Cas 88 (DB), *Biswanath v. Govinda Chandra*.

('94) 18 Bom 737 (738) (D B), *Shiddapa v. Irava*.

('86) 1886 Bom P J 62 (D B), *Sadashiv v. Parbhuram*.

('23) 10 AIR 1923 Bom 412 (412): 73 Ind Cas 125 (D B), *Bala v. Bhiku*.

('10) 37 Cal 63 (65): 2 Ind Cas 414 (D B) *Jadunnath Choudhary v. Kailas Chunder*.

(1900) 4 Cal W N 369 (386) (F B), *Mohun Lal v. Sri Gungaji Cotton Mills, Co.*

('99) 26 Cal 955 (959) (D B), *Suraj Narain v. Pratap Narain*.

('86) 12 Cal 64 (67) (DB), *Punchanund Das v. Taramoni Chowdhraim*. (Document admitted on payment of duty and penalty.)

('78) 3 Cal 787 (789): 2 Cal L Rep 439 (D B), *Khoob Lal v. Jungle Singh*.

('71) 16 Suth W R 6 (7) (D B), *Enayetoollah v. Shaikh Meajan*.

('37) 24 AIR 1937 Lah 21 (22): 169 Ind Cas 854 (D B), *Allahabad Bank, Ltd. v. Rattan Lal*. (Document containing two different powers-of-attorney bearing single stamp admitted. Objection cannot be taken in appeal, that two stamps were necessary.)

('33) 20 AIR 1933 Lah 240 (240): 141 Ind Cas 569, *Rup Chand v. Beli Ram*.

('32) 19 AIR 1932 Lah 582 (583): 13 Lah 800: 142 Ind Cas 729 (DB), *Har Narain Sahib Ram v. Bihari Lal Charanjilal*.

('28) 15 AIR 1928 Lah 792 (793): 112 Ind Cas 695, *Shibram v. Abdul H Ghani*.

('27) 14 AIR 1927 Lah 371 (372): 100 Ind Cas 733, *Hari Singh v. Sahib Singh*.

('23) 10 AIR 1923 Lah 481 (483): 73 Ind Cas 652 (DB), *David Sutherland Clark v. Rose Grimshaw*.

('23) 10 AIR 1923 Lah 143 (144): 71 Ind Cas 42 (D B), *Mela Ram v. Mt. Prem Kaur*.

('08) 1908 Pun Re No. 108 page 498 (500) 1908 Pun W R 207, *Piran Ditta v. Mangal Singh*.

('91) 1891 Pun Re No. 2 page 3 (4) (D B), *Diwan Lachman Das v. Dholan Das*.

('79) 1879 Pun Re No. 102 p. 276 (277) (DB), *Sudama v. Kesho*.

('27) 14 AIR 1927 Mad 786 (787): 104 Ind Cas 415, *Kanakalla Rama v. Nallari Pitchayya*.

('26) 13 AIR 1926 Mad 1148 (1149): 98 Ind Cas 75, *Gopala Padaychi v. Raja Gopala Naidu*.

('21) 8 AIR 1921 Mad 413 (414): 62 Ind Cas 607 (D B), *Venkatarama Aiyar v. Chella Pillai*.



The effect of S. 61 is that the appellate Court may record a declaration as to deficiency of stamp and, impounding the document, forward it to the Collector.<sup>2</sup> But the validity of the admission of the document into evidence shall not be affected by this procedure and the appellate Court cannot exclude the document from the evidence.<sup>3</sup>

The fact that objection *was* raised in the trial Court does not entitle the party to raise the objection again in the appellate Court where the trial Court has overruled the objection and admitted the document in evidence.<sup>4</sup> The section unlike S.21

('18) 5 AIR 1918 Mad 1066 (1068): 39 Ind Cas 448 (DB), *Seshayya v. Venkata Subbayya*.

('98) 8 Mad L Jour 66 (68) (DB), *Lakshmi-narayana v. Ramajogi Garu*.

('39) 26 AIR 1939 Nag 220 (221): I L R (1940) Nag 671: 183 Ind Cas 509 (DB), *Ramchandra Krishnaji v. Zolba Bala*.

(The letting in of document cannot be regarded as an imperfection in procedure which can be corrected in appeal.)

('39) 26 AIR 1939 Oudh 85 (86): 179 Ind Cas 635, *Jumman Khan v. Jagannath*.

('37) 24 AIR 1937 Oudh 19 (20): 12 Luck 484: 165 Ind Cas 370 (DB), *Jagannath Baksh v. Chandra Bhukhan*.

('08) 11 Oudh Cas 152 (154), *Humayun v. Wajid Ali*.

('21) 8 AIR 1921 Pat 318 (319): 60 Ind Cas 652, *Brahma Deo Rai v. Ramkishun Mahton*.

('36) 23 AIR 1936 Pesh 200 (201): 166 Ind Cas 254 (DB), *Wazir Chand v. Kundan Lal*.

('35) 22 AIR 1935 Rang 160 (160): 13 Rang 322: 156 Ind Cas 589, *Vellayappa Chettyar v. Somasundaram Chettyar*.

('16) 3 AIR 1961 Upp Bur 2 (3): 33 Ind Cas 595, *Mi. Mi v. Sohan Singh*.

[See ('72) 14 Moo Ind App 24 (38, 39): 15 Suth W R 32 (P C), *Mantapa Nadgowda v. Baswantrao Nadgowda*. (As to rejecting the document *in toto* for want of a stamp, there would have been this serious difficulty, that there does not appear to have been any objection raised to its admission in the Court of first instance, and it is difficult to see how, that being the case, it would have been a just course to have rejected *in toto* the document in the Court of last appeal (Lord Cairns).]

[See also ('65) 3 Suth W R (Act X Rul) 158 (158) (DB), *Goluck Chunder Sein v. Sheikh Khan Mohamed*.

('78) 1878 Pun Re No. 28 p. 116 (118) (DB), *Dyal Singh and Sunder Singh v. Mangal Mal*.

('78) 1878 Pun Re No. 2 p. 14 (17) (DB), *J. C. Morice v. Simla Bank Corpn. Ltd.* (Letters requiring stamp under Art. 5 of 2nd Schedule to Act XVIII of 1869, *not stamped*. Objection to stamp not taken in the Court below—Objection as to stamp cannot be taken for the first time in appeal.)

('65) 2 Mad H C R 321 (321) (DB), *Lakshmi Narayan v. Suppara Gaundan*.]

[But see ('70) 5 Mad H C R 391 (401) (DB), *Rahamatulla Saib v. J. T. Ward*.

('68) 3 Mad H C R 297 (298) (DB), *Adinarayana Setti v. Minchin*.]

Also see S. 17 Note 10.

2. See ('83) 1883 Pun Re No. 195 p. 586 (588) (FB), *Baiju v. Jowahir*.

3. ('70) 1870 Pun Re No. 79, p. 205 (206) (DB), *Narain Das v. Sunt Lal*.

('66) 1866 Pun Re No. 21 p. 28 (29), *Umbah v. Hurjus*.

[See ('30) 17 AIR 1930 Bom 392 (394): 128 Ind Cas 31 (FB), *Collector, Ahmednagar v. Rambhau*. (The only exception to the provision laid down in this section would be when the matter is taken before the appellate Court under S. 61 either on the application by the Collector or otherwise; then in that case the matter could be put right and the proper penalty could be recovered. The case decided in AIR 1927 Bom 195: 51 Bom 247 provides an instance of this.)

('10) 7 Ind Cas 582 (583) (DB) (Cal), *Basiruddin Ahmed v. Kalika Prasad*.]

4. ('36) 23 AIR 1936 Cal 556 (559): 63 Cal 1098: 167 Ind Cas 713 (DB), *Bhupati Nath Chakravathy v. Basanta Kumari Devi*. (Stamp matters are no concern of the parties and if, notwithstanding an objection, the trial Court admits the document, the matter stops there and the Court cannot subsequently order deficiency to be made up and penalty paid, or failing that, reject the document.)

('30) 17 AIR 1930 Cal 577 (577): 128 Ind Cas 187 (DB), *Nirode Basini v. Sital Chandra*. (Under this section it matters nothing whether a document was wrongly admitted or rightly admitted or admitted without objection or after hearing or without hearing such objection.)

('26) 13 AIR 1926 Mad 1148 (1149): 98 Ind Cas 75, *Gopala Padayachi v. Rajagopal Naidu*. (Section is mandatory and applies independently of the fact whether the admissibility was challenged in the lower Court or not.)

('25) 12 AIR 1925 Mad 1215 (1215): 91 Ind Cas 494 (DB), *Nagappa Chetty v. V. A. A. R. Firm*.

('82) 4 Mad 137 (140): 6 Ind Jur 127 (DB), *Venkata Chinnaya v. Venkataramaya Garu*. Also see S. 61 Note 1.



of the Civil Procedure Code, is not based on the failure to raise the objection at an earlier stage.<sup>5</sup> So also, the fact that objection was raised in the trial Court but no express decision was recorded thereon will not enable the objection to be raised again in appeal where the trial Court has as a matter of fact admitted the document in evidence.<sup>6</sup>

The section applies not only where the document has been admitted in evidence by the trial Court but also where the document has been admitted by the first and objection is taken in second appeal.<sup>7</sup>

Apart from the provisions of this section, an objection that a document not duly stamped was admitted in evidence does not affect the merits of the case or the jurisdiction of the Court. Hence, such an objection is covered by S. 99 of the Civil Procedure Code and cannot be a ground for reversing or varying a decree.<sup>8</sup>

Where a document has once been admitted by the trial Court, the appellate Court may come to its own conclusion as to the nature of the instrument. It is not bound to treat the document as the particular instrument which it was held to be by the trial Court. Thus, where the trial Court has held an instrument to be an acknowledgment and not a promissory note, the appellate Court is not precluded from treating the instrument as a promissory note.<sup>9</sup>

**7. Revision.**—The admission of an instrument not duly stamped in evidence cannot be questioned in reversion, as revision is a stage in the same proceeding.<sup>1</sup>

**8. Document not admissible even on payment of penalty.**—The words of this section are wide enough to include the case of an instrument which is not admissible in evidence even on payment of penalty, namely, the three documents excepted from Proviso (a) to S. 35. Hence, even in such cases, once the instrument has been admitted in evidence, the admission cannot be called in question on the ground that

5. See ('28) 15 AIR 1928 Pat 155 (156) : 6 Pat 765 : 106 Ind Cas 653, *Jagdeep Singh v. Firangi Singh*. (Section not confined to cases where document has been admitted without objection.)

6. ('29) 16 AIR 1929 Mad 622 (623) : 119 Ind Cas 472, *Venkateswara Iyer v. Ramanatha Dheekshitar*. (No issue raised on objection and instrument marked as exhibit unconditionally—12 Bom L R 466 distinguishing.)

7. ('90) 1890 Pun Re No. 139 p. 445 (446) *Mangal Sain v. Gobind Das*.

('82) 5 Mad 220 (221) (DB), *Ramasami Chhetti v. Ramasami Chetti*.

('01) 4 Oudh Cas 318 (319), *Allah Rakhu v. Dildar Ali*.

Also see Note 2.

8. ('87) 1 All 725 (726) (DB), *Afzal-un-nissa v. Tej Ban*.

('75) 7 N W P H C R 124 (126) (DB), *Makbul Ahmed v. Mt. Ifti Khar-un-Nissa Begum*.

('81) 5 Bom 621 (627) (DB), *Kastur Bhavani v. Appa*.

('80) 5 Cal 311 (313) (DB), *Sonaka Chowdrain v. Bhoobhunjoy Shaha*.

('76) 25 Suth W R 80 (80) (DB), *Roy Luchmeeput Singh Bhadoor v. Shaikh Mashuruff Ali*.

('71) 7 Beng L R 653 (661) : 16 Suth W R 203 (DB), *Ibrahim Azim v. W. D. Cruickshank*.

('70) 5 Beng L R (App) 10 (10) (DB), *Srinath*

*Saha v. Sarada Gobindo Chowhry*.

('69) 3 Beng LR 126 (130) : 11 Suth WR 520 (DB), *Mark Ridded Currie v. S. V. Mutu Raman Chetty*.

('69) 3 Beng L R (AC) 235 (237) : 12 Suth W R 47 (DB), *Lalji Singh v. Syad Akram Ser*. ('82) 5 Mad 220 (221) (DB), *Ramasami Chetti v. Ramasami Chetti*.

[See also ('67) 1867 Pun Re No. 59 page 119 (119) (DB), *Turtee v. Mukh Ram*.]

9. ('34) 21 AIR 1934 Mad 500 (501, 503) : 57 Mad 783 : 51 Ind Cas 241, *Venkatakrisna Reddi v. Batcha Reddi*. (Dissenting from AIR 1926 Mad 1148 and relying on 13 Bom 449.)

[See also ('89) 13 Bom 449 (456), *Devachand v. Hirachand Kamraj*. (Instrument held to be 'bond' and admitted—It could be treated as promissory note.)]

#### Section 36—NOTE 7

1. ('44) 31 AIR 1944 Bom 235 (235) : 219 Ind Cas 272, *Bhagwandas v. Chhaganlal*. ('27) 14 AIR 1927 Lah 876 (876) : 102 Ind Cas 884, *Attar Singh Sunder Singh v. Mool Chand*. (Revision under S. 25, Provincial Small Cause Courts Act.)

('23) 10 AIR 1923 Nag 284 (285) : 73 Ind Cas 65, *Krishnaji v. Sukhdeo*.

[See ('89) 13 Bom 449 (451) (FB), *Deva Chand v. Hirachand Kamraj*. (Order admitting an instrument in evidence in contravention of S. 35—No revision lies.)]



the instrument was not duly stamped.<sup>1</sup> Thus, where a suit is based on a promissory note and the note is not duly stamped, if the instrument is admitted in evidence, such admission cannot be subsequently called in question.<sup>2</sup>

**9. Unstamped partition decree.**—When an unstamped partition decree is executed, it is acted upon and not admitted in evidence. Hence, this section does not preclude objection being taken in appeal to such execution.<sup>1</sup> But when an unstamped partition decree is admitted in evidence on payment of duty and penalty under proviso (a) to S. 35, its admissibility cannot be questioned in appeal.<sup>2</sup>

**10. Document rejected by lower Court—Power of appellate Court.**—This section does not apply where a Court has refused to admit a document in evidence as being not duly stamped. Hence, such a refusal can be questioned in appeal.<sup>1</sup>

But the appellate Court will only interfere where the order of the lower Court is improper. Where the instrument is not duly stamped but the deficit duty and penalty were not tendered in the lower Court but only tendered in the appellate Court, the appellate Court will not order the document to be received in evidence

Section 36—NOTE 8

1. ('31) 18 AIR 1931 Cal 480 (480): 134 Ind Cas 575 (DB), *Abinash Chandra v. Nagendra Nath*.
- ('78) 1878 Pun Re No. 28 p. 116 (118) (DB), *Dyal Singh v. Mangal Mal*. (Case of acknowledgment of debt.)
- ('34) 21 AIR 1934 Mad 700 (700): 152 Ind Cas 683, *Lakshmappa v. Masud Sahib*.
- ('37) 24 AIR 1937 Oudh 19 (20): 12 Luck 484: 165 Ind Cas 370, *Jagannath Baksh Singh v. Chandra Bhukhan Singh*.
- ('29) 16 AIR 1929 Rang 9 (10): 6 Rang 590: 114 Ind Cas 294, *Ma Nyun v. Maung San Mya*.
2. ('35) 22 AIR 1935 All 410 (411): 154 Ind Cas 517, *Lakshmi Das v. Lakho Ram*.
- ('89) 13 Bom 449 (457) (FB), *Deva Chand v. Hirachand Kamraj*.
- ('83) 1883 Pun Re No. 195 page 586 (587) (FB), *Baiju v. Jowahir*.
- ('34) 21 AIR 1934 Mad 383 (384): 57 Mad 779: 150 Ind Cas 51 (DB), *Vankata Reddi v. Hussain Setti*.
- ('34) 21 AIR 1934 Mad 700 (700): 152 Ind Cas 683, *Lakshmappa v. Masud Sahib*.
- ('02) 12 Mad L Jour 351 (353) (DB), *Sangappa v. Gevindappa*.
- ('29) 16 AIR 1929 Rang 9 (10): 6 Rang 590: 114 Ind Cas 294, *Ma Nyun v. Maung San Mya*.
- ('09) 1909 Upp Bur Rul 4th Qr Stamp 3: 4 Ind Cas 1086 (1088), *Mike v. Nga Kan Gyi*. [But see ('04) 2 Low Bur Rul 103 (104), *Maung Ba Kywn v. Ma Kye Kyee*. (Held "Reading sections 35, 36 and 61 together it appears to me that S. 36 applies to instruments which may be admitted in evidence under the provisos to S. 35 and to instruments which a Court holds to

be not liable to duty, but the absolute provisions of the main part of S. 35 are not affected by S. 36, and that if a Court admits and acts on an unstamped document which cannot under any circumstances be admitted and acted upon, S. 36 does not prevent a superior Court from dealing with the illegality." ]

Section 36—NOTE 9

1. ('42) 29 AIR 1942 Lah 260 (264): I L R (1942) Lah 307: 203 Ind Cas 34 (FB), *Gopi Mal v. Vidya Wanti*.
- ('32) 19 AIR 1932 Lah 249 (250): 135 Ind Cas 685, *Dil Bagh Rai v. Mt. Teka Devi*.
- ('38) 25 AIR 1938 Mad 307 (311): 183 Ind Cas 33 (DB), *Satyanandam v. Paramkusam Nammayya*.
- ('47) 34 AIR 1947 Bom 96 (98): ILR (1946) Bom 876, *Shankar Narayan v. Trimbak Narayan*. (Unstamped partition decree—Decree is admissible in evidence on payment of duty and penalty.)

Section 36—NOTE 10

1. See ('67) 3 Bom H C R (oc) 153 (156) (DB), *Royal Bank of India v. Hormasji*. (An appeal lies to the High Court from the decision of a Judge in a Division Court rejecting a document tendered in evidence under S. 17 (1) of the Stamp Act of 1862, on the ground that there had been an intention to evade the payment of duty.)
- ('68) 3 Mad H C R 71 (73, 74) (DB), *Subraya Pillai v. Srinivasa Pillai*. (An appellate Court has got power to re-open in appeal the question whether a document which the Court of first instance has declared to be liable to stamp under Act X of 1862, is so liable.)



on payment of the amount.<sup>2</sup> But where the deficit duty and penalty were tendered in the lower Courts but were improperly refused by them, the amount may be received even in second appeal.<sup>3</sup>

Where a party is not given an opportunity to tender the deficient duty and penalty in the trial Court, the tender of the amount in the appellate Court is proper.<sup>3a</sup>

Where the trial Court holds a document to be insufficiently stamped and requires a party to pay the deficiency and penalty, the party is not bound to pay the amount under protest before he can challenge the correctness of the order in appeal.<sup>4</sup>

**11. Admission of secondary evidence.**—It has been seen in Note 13 on S. 35 that secondary evidence of an instrument not duly stamped cannot be admitted. Suppose such secondary evidence *has* been admitted in such a case. Will this section apply to such a case so as to preclude an objection being raised after the admission of the evidence? On this question there is a conflict of decisions. The High Courts of Madras, Patna and Rangoon have held that this section will apply in such cases also.<sup>1</sup> But the contrary view has been taken by the Lahore High Court and the Peshawar Judicial Commissioner's Court according to which this section applies only where the *original* instrument itself has been admitted in evidence, so that where the objection is to the reception of secondary evidence such objection is not barred under this section.<sup>2</sup>

Where the original document is duly stamped but a *copy* is admitted in evidence a subsequent objection as to the want of due stamp on such *copy* will be precluded under this section.<sup>3</sup>

2. ('83) 1883 All W N 93 (96, 97) (FB), *Rupchand v. Thakur Dial*.

('96) 20 Bom 791 (794) (DB), *Raghunathdas v. Rambhau Mansaram*.

('73) 10 Bom H C R 441 (443) (DB), *Ramkrishna Gopal v. Vithu Shivaji*.

('79) 4 Cal 213 (215) (DB), *Chanpabaty v. Bibijiban*.

('67) 7 Suth W R 439 (439) (DB), *Gourpershad Singh v. Lalla Nundlal*.

('02) 1 Low Bur Rul 84 (84), *Ma Shive Kyaw v. Ma Bok Gale*.

Also see S. 35 Note 18.

3. ('97) 1897 Bom P J 382 (FB), *Adarji v. Rajaram*. (Instrument under S. 26 admitted to a limited extent—Appellate Court can receive the deficit duty and penalty when the same has been refused by the lower Court under misconception of law and give full effect to the instrument.)

('73) 10 Bom H C R 441 (443) (DB), *Ramkrishna Gopal v. Vithu Shivaji*.

3a. ('34) 21 AIR 1934 Lah 730 (732): 153 Ind Cas 233 (DB), *Thakur Das Rup Chand v. Sher Ahmed Iqbal Ahmed*.

Also see S. 35 Note 18.

4. ('98) 1898 Bom P J 232 (DB), *Appanbhat v. Gundabhat*.

#### Section 36—NOTE 11

1. ('37) 24 AIR 1937 Mad 431 (432): 169 Ind Cas 641, *Satyavati v. Pallaya*.

('28) 15 AIR 1928 Pat 134 (137): 7 Pat 99: 105 Ind Cas 502, *Herbert Francis v. Md.*

*Akbar*.

('27) 14 AIR 1927 Rang 109 (110): 4 Rang 363: 101 Ind Cas 198 (DB), *Po Htoo Maung v. Ma Ma Gyi*. (23 Mad 49 explained.)

2. ('38) 25 AIR 1938 Lah 90 (92): 181 Ind Cas 642, *Ladha Ram v. Harichand*.

('26) 13 AIR 1926 Lah 415 (416): 94 Ind Cas 75, *Jhanda Singh v. Harnam Singh*.

('38) 25 AIR 1938 Pesh 32 (33): 176 Ind Cas 312, *Bhagwan Das v. Amardas Shamdas*.

3. ('13) 19 Ind Cas 445 (446) (DB) (All), *Abid Husan v. Asghar Hussain*.

#### Section 36—NOTE 12

1. ('24) 11 AIR 1924 Cal 794 (795): 82 Ind Cas 416 (DB), *Kali Charan v. Mani Mohan*. (Reference to arbitration not duly stamped.)

('12) 39 Cal 669 (678): 16 Ind Cas 153, *Bombay Company Ltd. v. National Jute Mills Co.* (Question relating to stamp on reference.)

Also see S. 35 Note 17.

2. ('12) 39 Cal 669 (678): 16 Ind Cas 153, *Bombay Company Ltd. v. National Jute Mills Co. Ltd.* (Reference to arbitration not duly stamped.)

3. ('21) 8 AIR 1921 Cal 613 (615, 616): 77 Ind Cas 845 (DB), *Rung Lal Kaloo Ram v. Kedar Nath Kesriwal*. (Although an award has been made by arbitrators on the basis of an unstamped agreement to submit to arbitration, the award cannot be questioned on that ground.)



**12. Arbitration proceedings.**—This section applies also to arbitration proceedings. Hence, where an instrument not duly stamped has been admitted in evidence by the arbitrators, such admission cannot be questioned subsequently in the same proceedings.<sup>1</sup> An application to file the award is a stage in the same proceedings and so, an admission of an unstamped document by the arbitrators cannot be questioned in the proceeding on such application.<sup>2</sup>

It has been held that the effect of this section is to make the instrument available for the purposes of the proceedings as if it were duly stamped ; so that even in a *suit* to set aside an award, the award cannot be questioned on the ground that the reference to arbitration was not duly stamped.<sup>3</sup> A contrary view has, however, been taken in the case noted below<sup>4</sup>.

**37.** <sup>a</sup>[The collecting Government] may make rules providing that, where an Admission of improperly stamped instruments. instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

<sup>a</sup>. Substituted for the words "the Governor-General in Council" by A. O.

### Notification.

All functions of the Central Government under, or in relation to, S. 37 have been entrusted to Provincial Government.—See Government of India, Finance Department (Central Revenues) Notification No. 9 dated 13-11-1937.

### INTERPRETATION OF STAMPS OF IMPROPER DESCRIPTION

#### REFERRED TO IN SECTION 37.

The following letter No. 2412-S.R., dated the 22nd May 1900 from the Government of India, Finance and Commerce Department, to the Government of the North-Western Provinces and Oudh, regarding the interpretation of stamps of "improper description," referred to in S. 37 of the Indian Stamp Act II of 1899, is circulated for the information and guidance of all Revenue Officers :—

Letter No. 2412-S. R., dated Simla, the 22nd May 1900 from the Under-Secretary to the Government of India, Finance and Commerce Department, to the Secretary to the Government of North-Western Provinces and Oudh, Separate Revenue (Stamps) Department.

I AM directed to acknowledge the receipt of your letter No. 42-XIII-630-A., dated the 3rd February 1900, enquiring whether instruments, such as a receipt bearing a postage or telegraph or court-fee stamp, can be dealt with as bearing a

4. ('24) 11 AIR 1924 Cal 794 (795) : 82 Ind Cas 416 (DB), *Kali Charan v. Mani Mohan*. (So far as the suit was concerned the other party could challenge the jurisdiction of the arbitrators on the ground that here-was no valid reference.)

Section 37—NOTE 1

('29) 16 AIR 1929 P C 279 (282) 56 Ind

App 379 : 7 Rang 624 : 120 Ind Cas 645 (P C) *Ma Pwa May v. S. R. M. M. A. Chettiar Firm*.

2. See Statement of Objects and Reasons of the Bill of 1897.

3. See the speech of the Hon'ble Sir James Westland, dated the 21st March 1898.



"stamp of sufficient amount but of improper description" under S. 37 of the Indian Stamp Act, II of 1899, and R. 16 of the rules published in the notification in this Department, No. 786-S. R., dated the 17th February 1899, that is to say, whether such an instrument can be certified to be duly stamped on payment of the duty with which it is chargeable or, under certain circumstances, without such further payment.

2. In reply, I am to say that the Government of India agree with the view of the Board of Revenue that a stamp of "improper description" within the meaning of S. 37 of the Act must be one of the stamps described in the Indian Stamp Act.

3. The contrary view is not, however, entirely untenable, and it would be well if a judicial ruling could be obtained.<sup>a</sup> In the absence of such a ruling, it should be held that the instruments described do not come within the meaning of section 37 of the Act.

a. Now see ('29) 16 AIR 1929 P O 279 (282): 56 Ind App 379: 7 Rang 624: 120 Ind Cas 645, *Ma Pwa May v. Chettiar Firm*.

#### SYNOPSIS

- |   |   |
|---|---|
| 1. Scope and applicability of section.                        | 4. Collector's certificate.               |
| 2. "Stamp of sufficient amount, but of improper description." | 5. Collector's certificate whether final. |
| 3. Stamp of improper description.                             | 6. This section and S. 35, Proviso (a).   |
|   | 7. Opportunity to move Collector.         |

1. **Scope and applicability of section.**—This is a remedial section<sup>1</sup> and was introduced for the first time in the present Act with a view to provide for cases where by inadvertence a stamp of improper description has been used.<sup>2</sup>

The section is an enabling one authorising the collecting Government to make rules; it does not lay down any rule or system by itself.<sup>3</sup>

Rule 18 of the Indian Stamp Rules, 1925, was accordingly framed under this section and is as follows:

"When an instrument bears a stamp of proper amount, but of improper description, the Collector may, on payment of the duty with which the instrument is chargeable, certify by an endorsement that it is duly stamped:

Provided that where the stamp borne on the instrument is a postage stamp and the proper description of stamp is a stamp bearing the words 'India Revenue,' or the words 'Revenue, B and O,' or the words 'Bombay Revenue,' the Collector shall so certify if the instrument was executed before, and shall not so certify, if it was executed on or after, the 1st April 1935."

It will be seen that it is only the Collector who is empowered to certify a document as duly stamped under this rule.

It will also be seen that under this section *any* instrument can be validated by the Collector. Thus an instrument which is chargeable with the duty of one anna or half an anna or a bill of exchange or a promissory note can be certified to be duly stamped under this section,<sup>4</sup> unlike the position under Ss. 32 and 35 which exclude these instruments from their purview.

4. ('40) Bihar S M pp. 122-123. (Receipts and hundis are not excluded from the benefit of S. 37.)

('31) Beng S M Vol. I p. 38. (Do.)  
(11) 7 Nag L R 26 (29): 10 Ind Cas 702 (DB),  
*Tukaram v. Sonaji*.



It will further be observed that, unlike Ss. 35 and 40, this section, read with R. 18, does not require the payment of *penalty* in addition to the payment of duty.

The effect of the Collector's certificate is to validate the instrument retrospectively from the date of its execution.

2. **"Stamp of sufficient amount, but of improper description."**—The condition necessary for the applicability of this section is that the instrument must bear a stamp of sufficient amount, but of improper description. If the instrument does not bear any stamp at all, the section will not apply. Thus, where a partition decree was not stamped at all, but was nevertheless acted upon and executions were ordered and, at a later stage, on objection, the decree was engrossed on a proper stamp, it was held that this section had no application as it was not a case of an instrument written on a stamp of sufficient amount but of improper description and therefore the instrument did not become validated retrospectively.<sup>1</sup>

3. **Stamp of improper description.**—It has been seen in the Notes on S. 10 that several descriptions of stamps have been prescribed for denoting the stamp duty on instruments, under this Act and the rules made thereunder. Thus a *hundi* payable otherwise than on demand, but not more than one year after date or sight and not exceeding Rs. 30,000 in value, is required to be written on a stamp paper bearing the word "Hundi." If it is not so written, but is written on a stamp paper not bearing the word "Hundi," or an adhesive stamp is affixed to it, it is a case of a "stamp of improper description" within the meaning of this section. See R. 4, Indian Stamp Rules, 1925.

But, besides the above-mentioned stamps, there are also other kinds of stamps, such as postage stamps, court-fee stamps, forest stamps and telegraph stamps. Where, therefore, an instrument bears any such stamp, the question arises whether it bears a stamp of "improper description," in other words, whether that expression would include a description of stamp which is inappropriate for the purposes of the Stamp Act.

On this question, a Full Bench of the High Court of Allahabad has laid down that the expression does not include a description of stamp appropriate for purposes altogether outside the Stamp Act, but must be confined to a stamp which is used for the purpose of denoting the stamp duty chargeable on an instrument, but which is improper in a particular case, having regard to the Act and the Rules.<sup>1</sup> In that case an acknowledgment of debt of the kind described in Art. 1 was stamped with a one anna postage stamp instead of with a one anna receipt stamp. It was held, applying the above principle, that this was not a case of a stamp of improper description, but that the acknowledgment must be treated as if it had not been stamped at all.

This case was decided before the use of half anna and one anna postage stamps for denoting stamp duties was recognised by R. 16. (See S. 10 Note 9). In a case arising under that Rule, the late Judicial Commissioner's Court of Nagpur held, dissenting from the view of the Allahabad High Court that a promissory note stamped with four quarter anna postage stamps instead of with a single one anna postage stamp was an instrument bearing stamps of improper description, on the ground that any stamp of the prescribed value, whether judicial, postal, forest or telegraph,

Section 37—NOTE 2

1. ('38) 25 AIR 1938 Mad 307 (311): 183 Ind Cas 33 (DB), *Satyanandam v. Nammaya*.

Section 37—NOTE 3

1. ('01) 23 All 213 (215): 1901 All WN 54 (SB), *Reference under Stamp Act, S. 57, II* of 1899. (Disapproved on another point

in AIR 1929 PC 279: 56 Ind App 379: 7 Rang 624 (PC).)

[See also ('10) 7 Ind Cas 94 (96) (DB) (Cal): *Rafi-ud-Din v. Latif Ahmad*. (The expression "stamp of a description other than that prescribed for such instrument" in S. 52, Stamp Act was similarly construed, following 23 All 213.)]



but not of the prescribed description, is a stamp of improper description.<sup>2</sup>

It is submitted that, though the actual decision of the case is correct, the construction placed upon the expression "stamp of improper description" is too wide to be accepted as correct. Sub-section (2) of S. 10 provides that rules made under that section may, among other matters regulate the description of stamps which may be used in the case of each kind of instrument. But none of the rules allows a forest or a telegraph stamp to be used for indicating the stamp duties. Hence an instrument bearing such a stamp cannot be regarded as an instrument bearing a stamp of improper description.<sup>3</sup>

The actual decision can, however, be supported on the ground that as some postage stamps were allowed to be used for indicating stamp duties the stamps used in the case could not be said to be only of a description appropriate for purposes altogether outside the Stamp Act.

Quarter anna stamps were held to be stamps of improper description also by the High Court of Madras,<sup>4</sup> but the High Court of Bombay held a contrary view.<sup>5</sup>

The proviso to R. 18 of the Stamp Rules now prohibits an instrument bearing a postage stamp from being certified if it was executed on or after the 1st April 1935<sup>6a</sup>.

In the undermentioned case<sup>6</sup> a mortgage was executed on an ordinary impressed revenue stamp, but surcharged with the words "court-fee" stamped over it. The amount of the stamp was sufficient to satisfy the revenue requirements. It was contended before their Lordships of the Privy Council that this section had no reference to any stamp except a revenue stamp pure and simple, and that a revenue stamp surcharged with the words "court-fee" was not within the meaning of the section a stamp of improper description. Their Lordships observed :

"This appears to their Lordships to be putting too narrow a construction upon a remedial section, and their Lordships would not be prepared to assent to the opinion of the High Court of Allahabad in a reference under the Stamp Act,<sup>7</sup> so far as it concerns court-fee stamps in their present form."

2. ('11) 7 Nag L R 26 (28) : 10 Ind Cas 702 (DB), *Tukaram v. Sonaji*. (Any stamp of the British Indian Government of the prescribed value, but not of the prescribed description, is "a stamp of sufficient amount but of improper description" within the meaning of R. 16 under the Stamp Act, and can, as such be validated by the Collector 23 All 213 dissented from.)

3. ('01) 23 All 213 (215) : 1901 All W N 54 (SB), *Reference under Stamp Act*, S. 57, II of 1899.

[See also ('34) Pun S M Part I B, Ch. 3, para 24, P. 13. (The stamp of improper description must be one of the stamps described in the Indian Stamp Act—Punjab Government endorsement No. 1633, dated 25-6-1900.)]

4. ('32) 19 AIR 1932 Mad 390 (391) : 55 Mad 627 : 137 Ind Cas 26 (FB), *Martis v. Cuthbert D'Souza*. (A promissory note

stamped with quarter anna postage stamps is a document bearing stamps of improper description and can be validated by the Collector under R. 18 of the Government of India Stamp Rules. 19 Bom. L R 947, referred.)

5. ('17) 4 AIR 1917 Bom 223 (223, 224) : 42 Ind Cas 947 (DB), *Venkataraman Ganap v. Shankaranarayan*.

('46) 33 AIR 1946 All 150 (151) : ILR (1946) All 82 : 224 Ind Cas 196 (DB), *Ramnath v. Bhagwati Prasad*. (Concession provided for by R. 18 read with S. 37 is available only in respect of instruments executed between 1-4-1934 to 1-4-1935. It does not apply to promissory note executed after 1-4-1935.)

6. ('29) 16 AIR 1929 PC 279 (282) : 6 Ind App 379 : 7 Rang 624 : 120 Ind Cas 645 (PC), *Ma Pwa May v. S; R. M. M. A. Chettiar Firm*. Also see S. 10 Note 15.

7. ('01) 23 All 213 (215) : 1901 All W N 54 (SB).



A partition decree was, by mistake, stamped with a court-fee stamp. The High Court of Calcutta held that this section was of no assistance to the decree-holder, but that it was a fit case for exercising its inherent power under S. 151 of the Civil Procedure Code and that the decree-holder should be allowed to put in a non-judicial stamp of the proper amount and the decree would be validated with retrospective effect from the date when it was drawn up.<sup>8</sup> It is submitted that in view of the Privy Council decision referred to above, this case cannot be treated as good law.

See also the undermentioned case.<sup>9</sup>

Where an instrument bears a stamp of sufficient amount but of improper description, but the stamp is left uncanceled, under S. 12 (2) the instrument must be deemed to be unstamped and hence the Collector cannot certify under this section that the instrument is duly stamped.<sup>10</sup>

**4. Collector's certificate.**—A certificate contemplated by this section is a certificate that the instrument is duly stamped. Where there is no such certificate, but an endorsement by the Sub-Collector appears on the instrument that a penalty has been levied, it cannot be regarded as a certificate given under this section.<sup>1</sup>

**5. Collector's certificate whether final.**—A certificate given by the Collector under this section that an instrument is duly stamped is final and a civil Court has no power to review the correctness of the Collector's action in giving the certificate.<sup>1</sup>

Similarly where the Collector has given the certificate the Chief Controlling Revenue-authority cannot make a reference to the High Court under S. 57 as there is no pending case before it which is to be disposed of by the Revenue-authority on receipt of the High Court's judgment.<sup>2</sup> A contrary opinion, namely, that the validity of a certificate can be challenged under S. 57 by the High Court on reference by the Revenue-authority, expressed in the undermentioned cases<sup>3</sup>, is, it is submitted, not correct.

See also Notes on S. 57.

8. ('10) 7 Ind Cas 94 (96) (DB) (Cal), *Raft-ud-Din v. Latif Ahmed*.

Also see S. 52 Note 2.

9. ('94) 1894 Pun Re No. 69 page 229 (231) (DB), *Damodar Das v. Major Doran*. (A cheque stamped with a penny stamp instead of one anna stamp was held to be not duly stamped—Case before this section was introduced.)

10. ('31) Beng S M Vol. I, page 38, (Citing, Board's Collection 8, File 175 of 1904.)

('40) Bihar S M pp. 122-123. (Do.)

#### Section 37—NOTE 4

1. ('20) 7 AIR 1920 Mad 910 (911) : 52 Ind Cas 758, *Kamakshi Ammal v. Subbaraya Chetty*.

#### Section 37—NOTE 5

1. ('26) 13 AIR 1926 Sind 211 (213) : 94 Ind Cas 747, *Parsram Hirji v. Parsram Hasanand*.

('11) 7 Nag L R 26 (29) : 10 Ind Cas 702 (DB), *Tukaram v. Sonaji*.

Also see S. 57 Note 3.

2. ('26) 13 AIR 1926 Bom 51 (52) : 91 Ind Cas 299 (SB), *Usuf Dadabhai v. Chand Moha-*

*med*. (Chief Revenue-authority cannot refer an abstract question when there is no pending case before it. It can refer a case only when under S. 57, there is a case pending before it which is to be disposed of by it on receipt of the High Court's judgment.)

[See ('02) 25 Mad 751 (752) (SB), *Reference under Stamp Act, S. 57*. (Held that an adjudication by a Collector under S. 31 is by S. 32 final and such a case cannot be referred to the High Court under S. 57 as the word 'case' used in S. 57 means a matter which has to be disposed of by the Revenue-authorities conformably to the judgment of the High Court on the case referred to it for opinion by the Revenue-authorities.)]

('18) 5 AIR 1918 All 181 (182) : 40 All 128 : 47 Ind Cas 299 (SB), *In the matter of Khubchand*.

3. ('11) 7 Nag L R 26 (29) : 10 Ind Cas 702 (DB), *Tukaram v. Sonaji*.

('26) 13 AIR 1926 Sind 211 (213) : 94 Ind Cas 747, *Parsram Hiraji v. Parsram Hasanand*  
Also see S. 57 Note 3.



6. **This section and S. 35, Proviso (a).**—It has been seen in Note 1 that it is only the Collector who is empowered to validate an instrument bearing a stamp of improper description under this section. But, though a civil Court cannot act under this section, the section does not take away the jurisdiction of the Court to admit an instrument not duly stamped, in evidence on payment of penalty and duty as provided by Proviso (a) to S. 35. Hence, a party if he so chooses, may, instead of moving the Collector under this section, pay the duty and penalty and have the instrument admitted under that proviso.<sup>1</sup>

7. **Opportunity to move Collector.**—Where a plaintiff institutes a suit on the basis of an instrument which is found to bear a stamp of improper description, the Court should not dismiss the suit on the ground that the instrument is inadmissible in evidence, being not duly stamped. It should give the plaintiff an opportunity of moving the Collector to validate the instrument under this section. Omission to give such opportunity on the part of the lower Court is a good ground of appeal against the dismissal of the suit.<sup>1</sup>

\*38. (1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

#### SYNOPSIS

- |                          |   |
|--------------------------|---|
| 1. Scope of the section. | 3. Admission of instrument on payment of duty only under S. 37. |
| 2. Sub-section (1).      | 4. Sub-section (2).   |

1. **Scope of the section.**—This section lays down the procedure to be followed by the person impounding an instrument under S. 33 of the Act<sup>1</sup>. When such person has authority to receive evidence and admits the instrument in evidence on payment of duty and penalty, he has to follow the procedure prescribed by sub-s. (1) of the section. In other cases he has to follow the procedure laid down in sub-s. (2).

When under sub-s. (1) the authenticated copy of the instrument and the amount of the duty and the penalty levied is sent to the Collector, he may, under S. 39 (1), refund any portion of the penalty in excess of five rupees if he thinks fit to do so.

\*[1879—S.35 ; 1869—Ss. 21, 22, 23 ; 1862—S. 17 (2) ; 1860—S. 13 (5), Cf. (1870) 33 & 34 Vict., c. 97—S 16 (2) ; (1891) 54 & 55 Vict., c. 39—S. 14. (2).]

#### Section 37—NOTE 6

1. ('09) 2 Ind Cas 481 (484) (FB) (Mad), *Marie Jacob Rodrigues v. Peter Fernandez*.

#### Section 37—NOTE 7

1. ('11) 7 Nag L R 26 (31) : 10 Ind Cas 702 (DB), *Tukaram v. Sonaji*.

#### Section 38—NOTE 1

1. ('26) 13 AIR 1926 All 478 (478) : 93 Ind Cas 960, *Pearey Lal v. Sukhan Ram*.



Where a Court has levied an *insufficient* amount as duty and penalty, the proper procedure is for the *Collector* to move the appellate Court under S. 61. An *appeal* from the order of the Court is not the proper procedure.<sup>2</sup>

As to refund of excess duty levied by a Court under S. 35, see section 45 (2).

As to return of the original of a document of which a copy is sent to the Collector under sub-s. (1) see S. 42.

When the person impounding the instrument acts under sub-s. (2) of this section, the further procedure to be followed by the Collector is the one laid down in S. 40 of the Act.

**2. Sub-section (1).**—This sub-section applies only when the person impounding an instrument and having authority to receive it in evidence *admits such instrument in evidence*. If the impounded instrument is not admitted in evidence this sub-section cannot apply, but sub-s. (2) applies. This, however, does not mean that a Court has a general discretion under S. 35, Proviso (a), as to admission of instruments not duly stamped. When an instrument not duly stamped is tendered in Court the duty of the Court is to follow the procedure laid down in S. 35, Proviso (a) and this sub-section, i.e., to receive the deficiency and penalty and admit the document in evidence and do other things mentioned in this sub-section. The Court cannot, in such a case, refuse to admit the instrument in evidence and follow the procedure in sub-s. (2) of the section.<sup>1</sup>

In the undermentioned case<sup>2</sup> decided by the Judicial Commissioner's Court, Nagpur, a suit was filed in the Small Cause Court on a bond executed in Khairagarh State and bearing a stamp of Re. 1 of that State. The Small Cause Judge referred the following questions to the Judicial Commissioner's Court :

- (i) Whether the Civil Court in British India might impound the document under S. 35 and send it to the Collector under S. 38 ;
- (ii) whether, if the document could not be stamped under any provision of the Act, it was totally excluded from evidence or not ; and
- (iii) whether the document was sufficiently stamped in British India.

2. See ('26) 13 AIR 1926 All 478 (478) : 93 Ind Cas 960, *Pearey Lal v. Sukhan Ram*. (Where a Judge discovers that an instrument presented to him is insufficiently stamped, he is bound to impound it before he admits the instrument in evidence upon payment of penalty and deficient duty. The decision then finally rests with the Collector to determine whether the instrument was really insufficiently stamped or not and that duty cannot be discharged by an appellate Court.)

Also see S. 39 Note 1.

#### Section 38—NOTE 2

1. †('39) 26 AIR 1939 All 515 (516) : I L R (1939) All 546 : 183 Ind Cas 744 (DB), *Shiva Prasad v. Shambhu Nath*.

('07) 9 Bom L R 122 (123), *Nathu Gangaram v. Hansraj Maranji*.

[See also ('72) 14 Moo Ind App 24 (38) : 15 Suth W R 32 (PC), *Mantappa Nadgowda v.*

*Baswantrao Nadgowda*. (Deed of release insufficiently stamped—High Court upholding admission of document by lower Court but reducing its effect and operation by making it a deed of release for so much property as would be covered by the stamp—Held High Court ought to have required the deed to be properly stamped and penalty paid—Course adopted was unauthorized.)]

2. ('35) 22 AIR 1935 Nag 54 (55) : 31 Nag L R 162 : 156 Ind Cas 213, *Kedarmal Roghunnath v. Ratiram*. (Where a bond executed outside British India is presented in a British Indian Court nearly 10 months after its execution, it cannot be stamped in British India under the provisions of S. 18, nor can it be endorsed by the Collector under S. 32. But the Court must impound the document under Proviso (a) to S. 35 and send it to the Collector under S. 38 of the Stamp Act.) Also see S. 35 Note 22.



The reference was answered in the following terms by a single Judge :

“ As regards the first question, I am of opinion that S. 35, Proviso (a), is mandatory and that the document in question being a bond and not one of the documents excepted in that proviso must be admitted in evidence on payment of the duty and penalty . . . . the Civil Court must now impound the document under Proviso (a) to S. 35, Stamp Act, and send it to the Collector under S. 38 of the Act. The second question as regards the admissibility of the document is not now of much importance, as I have held that the document is admissible upon payment of the duty and penalty . . . . The last question, namely the duty to be paid, is a fiscal one and must be decided by the Collector. If the Judge of the Small Cause Court is unable to determine whether the amount of duty paid is sufficient or not, or what duty should be paid, he should state the same when sending the case to the Collector under S. 38 of the Act, and it will then be for the Collector to take action under S. 40 of the Act.”

It is submitted, the judgment is full of inaccurate and wrong statements. An instrument is never impounded under the Proviso (a) to S. 35. The provision for impounding an instrument is contained in S. 33 of the Act. An instrument is first impounded under S. 33 and it is then admitted in evidence on payment of duty and penalty under Proviso (a) to S. 35. When a document is admitted in evidence under S. 35, the original document is not sent to the Collector but under sub-s. (1) of this section an authenticated copy of it is sent to him. When this is done the further action taken by the Collector is under S. 39 and not under S. 40. When action is taken under sub-s. (2) of this section then only S. 40 comes into operation.

Under the sub-section the party must pay the deficiency of the stamp duty and the penalty to the Court and cannot of his own accord, deposit the same in the treasury.<sup>3</sup>

When the Court admits the instrument in evidence upon payment of duty and penalty it is bound to send to the Collector an authenticated copy of the instrument together with a certificate, in writing, stating the amount of the duty and the penalty levied, and the amount levied.<sup>4</sup> This is with a view to enable the Collector to exercise his powers under S. 39 of the Act.

**3. Admission of instrument on payment of duty only under Section 37.**—The words “or of duty as provided by S. 37” were newly added in the present section. Section 35 of the Act of 1879 which corresponded to the present S. 38 did not contain any similar words. The provision in S. 37 itself is new. The words imply that the person having authority to receive evidence may have power to accept payment of duty in respect of instruments mentioned in S. 37. But R. 18 of the Stamp Rules, framed in pursuance of the powers conferred by S. 37, empowers only the Collector to receive payment of the duty with which an instrument described in S. 37 is chargeable and to certify that it is duly stamped. The words “or of duty as provided by S. 37” therefore, can have no operation under the rules under S. 37 as they stand.

3. ('39) 26 AIR 1909 All 515 (516) : I L R (1939) All 546 : 183 Ind Cas 744 (DB), *Shiva Prasad v. Shambhu Nath*.

4.†('26) 13 AIR 1926 All 478 (478) : 93 Ind

Cas 960, *pearey Lal v. Sukhan Ram*. ('02) 25 Mad 752 (757) (SB), *Reference under Stamp Act, S. 57*. ('96) 18 All 295 (298) : 1896 All W N 68, *Kallu v. Halki*.



Hence, when an instrument bearing a stamp of a sufficient amount but of an improper description is produced before a Court, the Court must impound it under S. 33 and forward it to the Collector under S. 38 (2).<sup>1</sup> Or, if the full duty and penalty are paid under S. 35, Proviso (a), the Court may admit it in evidence and send an authenticated copy of the instrument to the Collector under S. 38 (1). According to certain decisions the Court must allow the party an opportunity to approach the Collector under S. 37 and have the instrument certified under that section by paying merely the duty<sup>2</sup>. In such a case, the effect of the Collector's certificate under S. 37 would be to make the instrument "duly stamped" from the date of execution and so there will be no question of impounding it or sending it (or a copy of it) to the Collector under this section.

**4. Sub-section (2).**—The sub-section provides that the person impounding an instrument shall send it in original to the Collector in cases other than those mentioned in sub-s. (1), i.e., in cases where the person impounding has no authority to receive the instrument in evidence and therefore cannot admit it in evidence or in cases where the person has authority to receive evidence but does not admit the instrument in evidence for some other reason.

As seen in Note 2 where an instrument has been admitted in evidence sub-s. (1) applies. An instrument cannot be admitted in evidence *provisionally* and then sent in original to the Collector under sub-s. (2) after the disposal of the suit.<sup>1</sup>

Where an instrument not duly stamped is tendered in Court and impounded by it, the party is entitled under S. 35, Proviso (a), to have the instrument admitted in evidence on payment of the deficit duty and penalty (except in the cases excepted under that proviso). But the party is not entitled, *pending the suit*, to ask the Court to send the document in original to the Collector under sub-s. (2) of this section so as to submit the opinion of the Court to that of the Collector under S. 40. The words "in every other case" in sub-s. (2) do not warrant this course.<sup>2</sup>

Where an instrument sent to the Collector under sub-s. (2) after the disposal of the suit and the Collector holds under S. 40 that the instrument is duly stamped, the Court cannot alter its decision in the suit<sup>3</sup>

Section 46 (2) provides that when an instrument is about to be sent under S. 38 (2) the person from whose possession it came into the hands of the person impounding the same, may require a copy of it to be made at the cost of the former and authenticated by the latter. Where the original was lost in transit it was

#### Section 38—NOTE 3

1. See ('29) 16 AIR 1929 P C 279 (282) : 56 Ind App 379 : 7 Rang 624 : 120 Ind Cas 645 (PC), *Ma Pwa May v. Chettiar Firm*. (Mortgage-deed bearing stamp of sufficient amount but of improper description filed in Court—Party applying for return of document for rectification of error by Collector—Court finding itself bound by S. 33 impounding document and sending it to Collector under S. 38 (2)—Collector levying duty and penalty and certifying document as duly stamped—*Held* Collector was not asked to exercise his powers under S. 37 but under S. 38 (2) and S. 40 (b)—Hence the instrument could not be deemed to be duly stamped as from date of its execution.)

2. ('11) 7 Nag L R 26 (29, 31) : 10 Ind Cas 702 (DB), *Tukaram, v. Sonaji*.  
( '26) 13 AIR 1926 Sind 211 (213) : 94 Ind Cas 747, *Parsram Hirji v. Parsaram Hassand*

#### Section 38—NOTE 4

1. †('85) 8 Mad 564 (565) (SB), *Reference under Stamp Act, S. 46*.
2. ('07) 9 Bom L R 122 (123), *Nathu Gangaram v. Hansraj Morarji*. (It would not be proper that the suit should be hung up for a considerable time—Application to send the document to the Collector, refused.)
3. ('42) 29 AIR 1942 Mad 381 (382) : 202 Ind Cas 77, *Murugayya Pillai v. Rajagopal Pillai*. (Judge should not take account of what happened after the disposal of the suit. 1907 All W N 38 diss. from.)



held that the Collector might equitably deal with the copy as if it were the original, making a note on it of the circumstances.<sup>4</sup>

The sub-section pre-supposes that the instrument has been impounded i.e., properly impounded under S. 33. The Collector derives his jurisdiction only from a valid order. If the order impounding the instrument is illegal even the Collector's jurisdiction is not properly exercised.<sup>5</sup>

**\*39. (1)** When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit,<sup>a</sup> [\* \* \*] refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

Collector's power to refund penalty paid under section 38, sub section (1).

**(2)** When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

a. Words "upon application made to him in this behalf or, if no application is made, with the consent of the Chief Controlling Revenue-authority" were omitted by Part I of the Schedule to the Decentralization Act, 1914 (IV of 1914).

**1. Scope of the section.**—Sub-section (1) of the section gives the Collector a discretion in cases of instruments sent to him under S. 38 (1) to order a refund of any portion of penalty paid in excess of five rupees even if the penalty is lawfully levied. But if the penalty recovered is not more than five rupees no refund can be allowed.

Sub-section (2), however, gives the Collector a discretion to refund the whole penalty in the case of instruments impounded merely because they are to be deemed unstamped under S. 15 of the Act. The proviso to sub-section (1) of S. 40 also contains a similar provision for remission in cases of instruments impounded by the Collector himself under S. 33 or sent to him under S. 38 (2).

Where a document is impounded under S. 33 and is sent to the Collector under S. 38 (1), and it is considered that the stamp duty levied is insufficient the proper course is not to *appeal* from the order of the Court. In such a case, the proper course is for the *Collector* to move the appellate Court under S. 61<sup>1</sup>.

\*[1879—S. 36]

4

(33) Mad S M page 43. (Citing, B P 1473, 7th June, 1882.)

5.†(42) 29 AIR 1942 Lah 265 (266) : 203 Ind Cas 7, *Uttam Chand v. Perma Nand*. (No jurisdiction to compel the production of a document and then impound it—High Court can interfere in revision with order under S. 38 (2) though proceedings before Collector are pending.)

(06) 1906 Pun L R No. 131, page 428 (432) (FB), *Jai Devi v. Gokal Chand*. (Document not produced before Court but sent for and impounded—Impounding is illegal.)

[See also (02) 25 Mad 525 (528) : 2 Weir 670 (DB), *King-Emperor v. Balu Kuppanyan*. (Insufficiently stamped instruments seized under search warrants issued by Magistrate and sent by him to Collector under S.

38 (2) Stamp Act—*Held* action of Magistrate was legal.)]

#### Section 39—NOTE 1

1. See (26) 13 AIR 1926 All 478 (478) : 93 Ind Cas 960, *Pearey Lal v. Sukhan Ram*. (Where a Judge discovers that an instrument presented to him is insufficiently stamped, he is bound to impound it under S. 33 before he admits the instrument in evidence upon payment of penalty and of the deficient duty. The decision then finally rests with the Collector to determine whether the instrument was really insufficiently stamped or not and he has also the power of remitting the penalty in excess of Rs. 5 under Ss. 39 and 41 of the Act. That duty cannot be discharged by the appellate Court.) Also see S. 38 Note 1.



Under S. 56 (1) the Board of Revenue can control the Collector's powers under this section only before it is actually executed, but the action resulting from the exercise of such power by the Collector cannot be undone.<sup>2</sup>

The power as to refund may be exercised by the Collector *suo motu*. Before the amendment of this section by the Decentralization Act (IV of 1914) the Collector could not act under the section without an application in that behalf and in case he wanted to exercise the power in the absence of any application he had to obtain the permission of the Chief Controlling Revenue-authority.

In cases of instruments executed prior to this Act, the duty chargeable is to be determined according to the Act in force at the date of execution but the penalty leviable is to be determined under the present Act. In such cases the procedure to obtain a refund of penalty will also be governed by the present Act.<sup>3</sup>

2. Refund of penalty by the Chief Controlling Revenue-authority See Note on S. 45.

**\*40.** (1) When the Collector impounds any instrument under section 33, or Collector's power receives any instrument sent to him under section 38, sub-section to stamp instruments (2), not being an instrument chargeable with a duty of one anna impounded. <sup>a</sup>[or half an anna] only or a bill of exchange or promissory note, he shall adopt the following procedure :—

- (a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be :
- (b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees ; or, if he thinks fit, <sup>b</sup>[an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees :

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

a. Inserted by S. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

b. Inserted by S. 6 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904.)

### Provincial Amendments.

#### BOMBAY

In sub-s. (1) of S. 40 before the words "one anna" insert the words "two annas".

—*Bombay Act II of 1932, Pt. IV. S. 15 (2).* (1-4-1932.)

\*[1879—S.37; 1869—Ss. 24, 28; 1862—Ss.15, 22; 1860—S. 13.]

2. ('02) 25 Mad 752 (759) (SB), *Reference under Stamp Act, S. 57.* | *Reference under Stamp Act, S. 46. (Per Kernan, J.,—Case under the Act of 1879.)*

3. ('82) 5 Mad 394 (396) : 7 Ind Jur 16 (SB), | Also see S. 45 Note 1.



**C. P. and BERAR.**

In sub-section (1) of S. 40 *substitute* the words "a receipt" for the words "an instrument chargeable with a duty of one anna or half an anna only or."

—*C. P. and Berar Act V of 1948, S. 2* [30-1-1948.]

**MADRAS**

In sub-section (1) of section 40.

(i) before the words "one anna" *insert* the words "one and a half annas;"

—*Madras Act XVI of 1943, S. 4 (c).* (1-10-1943.)

(ii) after the words "half an anna only" *insert* the following, namely—

"or a mortgage of crop (Art. 34 (a) of Sch. 1A) chargeable under cls. (aa) or (bb) of S. 3 with a duty of four annas."—*Madras Acts VI of 1922, S. 12.* (25-4-1922).  
and *XVI of 1943, S. 4 (c).* (1-10-1943.)

**SIND**

Same as that of Bombay.—*Sind Act I of 1938, S. 2.* (31-3-1938).

**UNITED PROVINCES**

In section 40, sub-section (1)

(i) for the words "an instrument chargeable with a duty of one anna or half an anna only" *substitute* the words "a receipt;"—*U. P. Act VII of 1941, S. 4.* (26-6-1941).

(ii) in clause (b) of the same sub-section *delete* the semicolon after the words "a penalty of five rupees" and *insert* a comma between the words "fit" and "an amount."—*U. P. Act XVIII of 1938, S. 4.* (13-2-1939).

**RELEVANT REFERENCE TO OTHER ACT.**

For modifications of the provisions of section 40 in respect of instruments to which the Indian (Specified Instruments) Stamp Act, 1924. (XIII of 1924) applies, *see* section 3 of that Act, reproduced in Appendix J.

**SYNOPSIS**

- |   |  |
|---|--|
| 1. Scope of the section.  | 5. Person who can be compelled to pay stamp duty and penalty under sub-s. (1) (b). |
| 2. Determination of duty and penalty under sub-s. (1) (b).              |  |
| 3. Finality of Collector's certificate under sub-s. (1) (a)—Sub-s. (2). | 6. Instruments which Collector cannot stamp.                                       |
| 4. Decision of Collector under sub-s. (1) (b).                          | 7. Return of instruments—Sub-section (3).  |

**1. Scope of the section.**—This section prescribes the procedure to be followed by the Collector when he himself impounds the instrument under s. 33 or receives any instrument forwarded to him under S. 38 (2).

If the Collector is of opinion that the instrument is duly stamped or is not chargeable with duty, he should certify by endorsement thereon that it is duly stamped or is not so chargeable, as the case may be. (Sub-section (1) (a).) If he does so, then under sub-s. (2), this certificate is final and cannot be questioned by the Chief Controlling Revenue-authority or by any other authority. (See NOTE 3.)

If the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, his course is to require the payment of the proper or deficient duty together with a penalty. (Sub-section (1) (b).) When the required duty and penalty are paid, the Collector certifies such payment by endorsement under



s. 42 (under which *Courts* too acting under s. 35 certify). Section 42 (2) declares that every instrument so endorsed should be deemed to be duly stamped. As to the finality of such certificate, see Notes on s. 42.

Under sub-s. (3), instruments received by the Collector under s. 38 (2) and dealt with under this section are to be returned to the impounding officer.

**2. Determination of duty and penalty under sub-section (1) (b).**—Under this clause, the Collector is to levy the stamp duty or the deficient amount thereof *plus* a penalty.<sup>1</sup> This penalty shall be Rs. 5 or, at the discretion of the collector, an amount not exceeding ten times the deficient duty whether or not such amount exceeds Rs. 5. There is no minimum penalty of Rs. 5 as under S. 35, Proviso (a).

The words "an amount not exceeding" were inserted by S. 6 of the Stamp (Amendment) Act, XV of 1904. After the introduction of these words, the Collector is free to levy an amount less than ten times the proper or deficient duty. The effect is that under the option the Collector is now free to levy an amount even less than Rs. 5. It may be observed that under S. 35, the amount required to be paid is the proper duty or the deficiency plus a minimum penalty of rupees five, or a sum equal to ten times the amount of the proper duty or deficient amount, as penalty, when ten times such duty or such deficient amount exceeds Rs. 5.

Where the executant had committed a breach of S. 27 and had withheld information with a view to defraud the State of its revenue, it was held that the Collector was justified in levying the full penalty chargeable and not merely the sum of Rs. 5.<sup>2</sup> But the law does not contemplate the imposition of full penalty as a matter of course; and where the Collector levies full penalty he should give reason for doing so.<sup>3</sup>

Where the instrument contravenes S. 13 or S. 14, it will be deemed to be unstamped under S. 15 and like every other unstamped instrument, it can be validated on payment of the proper duty and penalty under sub-s. (1) (b) of this section.<sup>4</sup> The proviso to the sub-section, however gives discretion to the Collector to remit the whole penalty if he thinks fit, in such a case.

The duty chargeable on an unstamped or insufficiently stamped document should be calculated with reference to the law in force at the time of its execution, but the penalty leviable is in all cases determined by the Act in force, at the time when the question arises.<sup>5</sup> (See Notes on Ss. 2 (6) and 2 (11).)

Where in a deed of gift referred to the Collector for necessary action, the value of the property dealt with was not set forth, it was held that it was not within the competence of the Collector to have the said property valued in order to assess the duty payable. It was also observed that if the value of the property was intentionally

#### Section 40—NOTE 2

1. ('37) 20 Nag L Jour 67 (68), *Ramaji v. Deputy Commissioner of Khandwa*.

('33) Mad S M page 45. (Citing, G. O. 2006, Rev., 2nd October 1937.)

[See also ('33) Mad S M page 44. (Citing, B P 433, 1st April 1880. In the case of a sale certificate which had been insufficiently stamped and impounded, the question was whether it was justifiable to hold the purchaser under that certificate liable to any penalty, as he was directed to produce, the stamp of the denomination on which the certificate was to be written. The Board held that a *penalty* must be levied in the first instance, but that it may be refunded.)

('31) Beng S M Vol. I p. 39. (When an insufficiently stamped lease and its counterpart are impounded, the proper procedure is to levy deficit stamp duty and penalty in respect of the lease only, but to hold the counterpart impounded until realisation has been effected. (Board's Circular Order No. 9 of June, 1903.)

(40) Bihar S M P, 124. (Do).

2. ('37) 20 Nag L Jour 67 (68), *Ramaji v. Deputy Commissioner of Khandwa*.

3. ('45) 1945 Nag L Jour 110 (110), *In re Pomdusa*.

4. ('88) 11 Mad 40 (41) (SB), *Reference under Stamp Act, S. 46*.

5. ('82) 5 Mad 394 (396) : 7 Ind Jur 16 (SB), *Reference under Stamp Act, S. 46*.



omitted with a view to defraud the Government, a prosecution would lie under S. 64.<sup>6</sup>

Where a Collector considering an instrument to be insufficiently stamped, levies the deficient stamp duty and penalty, but subsequently, before endorsing his certificate on the instrument, comes to know that the instrument is sufficiently stamped, he may certify that the instrument is fully stamped, and refund the sums collected under his erroneous orders, as sums levied by mistake.<sup>7</sup>

Similarly where an instrument is insufficiently stamped, but the amount of duty and penalty levied is not in accordance with law the Collector or his successor in office may, provided that the certificate on the instrument has not been endorsed, levy duty and penalty in accordance with law and refund the sum if any, collected in excess of the correct duty and penalty levied.<sup>8</sup>

The language of this section is imperative. Proceedings under this section, therefore, have to be taken in spite of a previous successful prosecution of the executant of the deed for evasion of stamp duty.<sup>9</sup>

See also the undermentioned case.<sup>10</sup>

**3. Finality of Collector's certificate under sub-section (1) (a)—Sub-section (2)—** If the Collector has certified under cl. (a) of sub-s. (1) of this section that the instrument in question is not chargeable with stamp duty or is duly stamped, sub-s. (2) declares such certificate to be conclusive evidence of the matters stated therein. It means that the correctness or validity of such certificate cannot be questioned by the Chief Controlling Revenue-authority or by any other authority.<sup>1</sup>

Thus in the undermentioned case<sup>1a</sup> the trial Court found that the instrument on which the suit was based was insufficiently stamped and therefore inadmissible in Court. The appellate Court dismissed the appeal solely on the ground that the instrument was insufficiently stamped. Subsequently, a certificate was given by the Collector under this section that the instrument was duly stamped. The High Court in second appeal held that the certificate was binding on it and remanded the case to the lower appellate Court for disposal on merits.

6. ('22) 9 AIR 1922 All 82 (83) : 44 All 339 : 65 Ind Cas 811 (FB), *In re Muhammad Muzaffar Ali*.

Also see S. 27 Note 2; S. 64 Note 5; Art. 23 Note 5; Art. 33 Note 5.

7. ('33) Mad S M page 41. (Citing, B P 147, 17th February 1888.)

8. ('33) Mad S M page 41. (Citing, B P Mis. 424, 3rd February 1937.)

9. ('33) Mad S M page 44. (Citing, B P 2619, 4th November 1881; G O 1787, R D 24 November 1881.)

(46) 33 AIR 1946 Mad 437 (441) : ILR (1947) Mad 141 : 227 Ind Cas 360, *Sethuraman v. Ramanathan*. (Mortgage for Rs. 10,000 also providing for further advances—Rs. 7,000 advanced from time to time—Application by mortgagee under S. 31 for adjudication as to stamp duty—Collector impounding it under S. 33 and adjudging under S. 40 that instrument was mortgaged for Rs. 10,000 and agreement for further advances Deficit—duty and penalty levied and certificate to that effect endorsed under S. 42.—Procedure adopted by collector held excluded the operation of S. 26 and mortgagee was entitled to claim full amount advanced under mortgage.)

#### Section 40—NOTE 3

1. ('02) 25 Mad 752 (756, 759) (SB), *Reference under Stamp Act, S. 57*.

('35) 22 AIR 1935 Nag 54 (55) : 31 Nag L R 162 : 156 Ind Cas 213, *Kedarmal Raghunath v. Rati Ram*. (Where a Court is unable to determine whether the amount of duty to be paid is sufficient or not, or what duty should be paid, the Court should state the same when sending the case to the Collector. The certificate of Collector under S. 40 (1) (a) is final and probably an order under S. 40 (1) (b) is also final. It is discretionary with the Collector whether the matter should be referred to the Chief Controlling Revenue-authority.)

('41) 28 AIR 1941 Lah 65 (66) : ILR 1940 Lah 628 : 193 Ind Cas 368 (SB), *Nand Lal v. Emperor*. (Collector's certificate under S. 40 (1) (a) is final and cannot be reviewed either by himself or by any other authority.) ('06) 1906 Pun L R No. 131 p. 428 (432) (FB), *Jai Devi v. Gokal Chand*. (Under S. 40 (1) (a), the adjudication of the Collector as to the amount of duty chargeable on an instrument is final and cannot be questioned by Courts.)

1a. ('87) 1887 All W N 21 (21) (DB), *Agar Chand v. Balak Rai*.



No doubt, under S. 56 (1) the powers exercisable by the Collector under this section are subject to the control of the Chief Controlling Revenue-authority. But that power of interference can only be exercised *before* the Collector has endorsed the certificate on the instrument,<sup>2</sup> and not after the Collector has issued the certificate.<sup>2a</sup> Nor can the question of stamp be reopened by a reference to the High Court under S. 57<sup>3</sup>, for, under that section a reference to the High Court is competent only while the "case" is pending and after the Collector has granted the certificate, no "case" can be said to be pending.<sup>3a</sup>

This sub-section however applies only to certificates under cl. (a) and not to certificates endorsed by the Collector on payment of the deficit duty and penalty as required under sub-s. (1) (b). An observation to the contrary in the under-mentioned case,<sup>4</sup> is, it is submitted, not correct.

An instrument bearing such endorsement will, however, under S. 42 (2) be admissible in evidence and capable of being acted upon and authenticated as if it had been duly stamped.

It has been held by the Allahabad High Court in the undermentioned case.<sup>5</sup> that the conclusive presumption under this sub-section does not apply where the Collector endorses the certificate on instruments which are excepted under this section, as the certificate is without jurisdiction in such a case. This, however, conflicts with another decision<sup>5a</sup> of the same High Court pronounced with reference to S. 32, which contains a provision similar to this sub-section.

2. ('02) 25 Mad 752 (760) (SB), *Reference under Stamp Act, S. 57*. (Per Bhashyam Ayyangar, J.)

('32) 19 AIR 1932 Cal 736 (737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook & Kelvey*. (Where proceedings commence under S. 40, the Board of Revenue would be able to interfere in such proceedings if it intervened before it was completed.)

2a. ('02) 25 Mad 752 (760) (SB), *Reference under Stamp Act, S. 57*. (Per Bhashyam Ayyangar, J.)

3. ('02) 25 Mad 752 (756) (SB), *Reference under Stamp Act, S. 57*. (Per Special Bench, White C. J., contra.)

('40) 15 Luck 318 (320) : 1940 Oudh W N 18 (20) (FB), *Himayat Ullah v. Parbhoo Dayal*. (NOTE.—AIR 1938 Oudh 226 : 14 Luck 227 (SB), followed—The instrument was forwarded to the Collector under S. 38 (2). From the facts of the case it is not clear, how this could have been done as the document had been admitted in evidence on payment of duty and penalty and so the case came under S. 38 (1).)

('38) 25 AIR 1938 Oudh 226 (227) : 14 Luck 227 : 177 Ind Cas 713 (SB), *Sita Ram v. Gaya Din*.

3a. ('02) 25 Mad 751 (752) (SB), *Reference under Stamp Act, S. 57*.

('18) 5 AIR 1918 All 181 (182) : 40 All 128 : 47 Ind Cas 299 (SB), *In re Khubchand*.

('29) 16 AIR 1929 Cal 799 (800) : 57 Cal 669 : 126 Ind Cas 135 (SB), *In re Marine Insurance Policies*. (It is well settled by the decisions of all the High Courts in India that S. 57 cannot be used for the obtaining of an opinion from the High Court on question of a general

nature not arising out of any particular case.) ('32) 19 AIR 1932 Cal 736 (737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook & Kelvey*. (Unless the Revenue-authority has still resting upon it the duty of disposing of a case, it is not intended by the statute that it should have a right to make a reference to the High Court.)

('26) 13 AIR 1926 Bom 51 (52) : 91 Ind Cas 299, *Usuf Dadabhai v. Chand Mahomed*. (Chief Revenue-authority cannot refer an abstract question when there is no pending case before it. It can refer a case only when under S. 57 there is a case pending before it which is to be disposed of by it on receipt of High Court's judgment.) Also see S. 56 Note 1 and S. 57 Note 3.

4. ('18) 5 AIR 1918 All 181 (182) : 40 All 128 : 47 Ind Cas 299 (SB), *In the matter of Khubchand*. (NOTE.—Otherwise, the decision, viz., after the issue of certificate by the Collector upon payment of the duty and penalty, no reference to High Court under S. 57, can be made, is not open to any objection.)

5. ('26) 13 AIR 1926 All 359 (359) : 48 All 332 : 93 Ind Cas 63, *Choteylal v. Girraj Kishore*. (Hundi bearing uncanceled stamp—Court impounding instrument and sending it to Collector—Collector imposing penalty and improperly endorsing document as sufficiently stamped, purporting to act under S. 40, which expressly excludes such instruments—Held Collector's certificate was not a certificate given in accordance with S. 40 and the conclusive presumption laid down in sub-s. (2) did not apply to it.)

5a. ('81) 3 All 115 (117) (DB), *Girdhari Das*



The Madras Board of Revenue has also ruled that the Collector has no power to stamp instruments excepted under this section and that a Court will be entitled to refuse to admit in evidence a receipt in spite of a certificate from the Collector under this section<sup>6</sup> as the Collector has no power to stamp instrument chargeable with a duty of one anna.

Section 56 (2) gives the Collector power, when acting under this section, to state a case to the Chief Controlling Revenue-authority if he is in doubt as to the proper decision. If the case is stated, then, under sub-s. (3) of S. 56, the Collector is bound to charge the stamp duty conformably to the judgment of the Revenue-authority. When the Collector states a case under S. 56 (2), it is also competent for the Chief Controlling Revenue-authority to make a reference on the question to the High Court under S. 57.

See also section 32 Note 2.

**4. Decision of Collector under sub-section (1) (b).**—If the Collector acts under sub-s. (1) (b) and levies duty and penalty and the required amount is paid, the Collector does not certify under this section, but under S. 42. Section 42 (2) declares that every instrument so endorsed shall be deemed to have been duly stamped.

As has already been seen in Note 3, the powers exercisable by the Collector under this section are subject to the control of the Chief Controlling Revenue-authority under S. 56 (1). It is well settled that until the Collector certifies by endorsement the required payment under S. 42 (2), the Chief Controlling Revenue-authority has full scope to interpose its control under S. 56 (1), at the instance of the party concerned or otherwise and require the Collector to exercise his power as it directs.<sup>1</sup> It is also well established that before the issue of the Collector's certificate, a reference to the High Court under S. 57 on the stamp question by the Chief Controlling Revenue-authority is competent; the reason is, until the Collector certifies by endorsement the instrument in question, the "case" must be considered as still pending. In short, before the Collector has occasion to give any certificate under S. 42 an order passed by the Collector under sub-s. (1) (b) can be interfered with by the Chief Controlling Revenue-authority directly under S. 56 or indirectly, by making a reference to the High Court under S. 57.<sup>2</sup>

The Collector acting under this sub-section may refer the question to the Chief Controlling Revenue-authority under S. 56 (2), if he is in doubt as to the proper decision. If he does so, the decision of the Chief Controlling Revenue-authority will be binding on the Collector. (Section 56 (3).)

*v. Jagannath.* (A promissory note, not payable on demand, executed on unstamped paper, was brought to a Collector, under S. 39 of Act of 1869, for adjudication as to the proper stamp, who upon the payments provided in that section having been made, the endorsement thereon provided in that section—*Held* that the irregularity of the Collector in making such endorsement did not render such promissory note inadmissible in evidence.)

Also see S. 42 Note 2.

6. ('33) Mad S M page 42 (42). (Citing, B P 766, 5th September 1888.)

Section 40—NOTE 4

1. ('02) 25 Mad 752 (760, 761) (SB), *Reference under Stamp Act, S. 57.* (Per Bhashyam Ayyangar, J.)

('33) 34 Pun L R 630 (631), *Tarlok Nath v. Emperor.*

2. ('02) 25 Mad 752 (760, 761) (SB), *Reference under Stamp Act, S. 57.*

('32) 19 AIR 1932 Lah 495 (496) : 13 Lah 745 : 138 Ind Cas 758 (SB), *Thakar Das v. Emperor.*

('36) 23 AIR 1936 Lah 449 (450) : 17 Lah 223 : 162 Ind Cas 774 (SB), *Shams Din v. Collector, Amritsar.*

Also see S. 56 Note 1 and S. 57 Note 3.

[See however, ('35) 22 AIR 1935 Nag 54 (55) : 31 Nag LR 162 : 156 Ind Cas 213, *Kedarnath Raghunath v. Ratiram.* (The certificate of the Collector under S. 40 (1) (a) is final and probably an order under S. 40 (1) (b) is also final.)



As to the finality of the Collector's certificate under S. 42 (2), see Notes on that section.

**5. Person who can be compelled to pay stamp duty and penalty under sub-section (1) (b).**—When a person, who wishes a document to be admitted in evidence in Court, is also one who is originally bound to bear the expense of providing the stamp duty, and he does not choose to pay the stamp duty and penalty required under sub-s. (1) (b), it is open to the Collector to recover such duty under S. 48 by distress and sale of his movable property. But, very often, the person wishing to admit the instrument in evidence is different from the person who is originally bound to bear the expense of stamp. In such a case, if he does not choose to pay the requisite stamp duty and penalty, the question arises whether he can be compelled to pay the same.

There is no distinct provision in this section or anywhere else in the Act empowering the Collector to demand the proper stamp duty and penalty from the person who produces it in Court. Sub-section (1) (b), no doubt, empowers the Collector to "require" the stamp duty or deficiency to be paid, but it is silent as to the person or persons who can be required to pay the same. According to the High Court of Allahabad, it is the person who wishes a document to be admitted in evidence in Court, who primarily is the person from whom the requisite duty and penalty should be recovered in the first instance, and if it is due from a third person, he can recover it under S. 44.<sup>1</sup> The Lahore High Court, on the other hand, holds that S. 44 is not conclusive on the point. According to it, the Court or the Collector cannot compel such person to pay the duty and penalty. The payment is left to his choice. If he chooses to pay, S. 14 enables him to recover the same. But the stamp duty and penalty can compulsorily be recovered only from the person liable to pay the proper stamp duty in the first instance. It was also observed that if in a particular case this Act did not fix the liability for payment on any particular person, the Collector should keep the impounded document in his custody and no person interested in the deed would be able to make any use of it unless and until the necessary duty and penalty were paid.<sup>2</sup> It is submitted that the Lahore view seems to be the better view.

See also S. 48 N 2.

**6. Instruments which Collector cannot stamp.**—This section precludes the Collector from levying any duty and penalty on an impounded instrument chargeable with a duty of one anna, or half anna, or a bill of exchange or a promissory note. For instances of instruments chargeable with a duty of one anna and half anna, see S 32 Note 4.

#### Section 40—NOTE 5

1. ('08) 30 All 271 (272) : 5 All L Jour 262 (DB), *Secretary of State v. Basharat Ullah*. [See ('40) Bihar S M page 124 (Note 1)—The deficient duty and penalty may be levied from either party the provisions of section 29 notwithstanding. (Advocate-General's opinion enclosed in Government Order No. 4346 of 4th December, 1888.)]

('31) Beng S M Vol I page 39. (Do.)]

2. ('40) 27 AIR 1940 Lah 315 (319) : ILR (1940) Lah 637 : 189 Ind Cas 709 (SB), *Mahommad Hussain v. Emperor*.

[See also ('39) 1939 Nag L Jour 364 (365),

*Roopchand Motiram v. Secretary of State* ('33) Mad S M, page 44. (Citing, B Ps 15, 6th January 1880 : 2408-R 28th November 1907 ; 521-R, Mis., 27th March 1908—When documents are impounded and sent to the Collector or Divisional Officers under Section 38, Act I of 1899, all that they need do is to look for payment of the penalty and insufficient stamp-duty to the person from whose custody the documents came into the hands of the impounding officer. But stamp-duty and penalty can be *compulsorily* levied under Section 48 only from the person liable to pay the proper duty in the first instance.) ('33) Mad S M page 45. (Citing B P 504, 30th August 1887.)] Also see S. 48 Note 2.



Under the rules framed in Madras for the disposal of such instruments, they should be retained by the Collector for 12 years and then destroyed. In the case of unstamped receipts and promissory notes entered on a page of an account book containing other entries, the procedure in that Province is to detach for retention the page or portion of the book containing the entry, though it might involve the taking into possession the other side of the page which might not require any stamp. If, however, the notebook were to contain only a few entries, the whole notebook might be retained and the party might be given certified copies of the other entries if required.<sup>1</sup>

**7. Return of instruments—Sub-section (3).**—This sub-section must be taken to refer only to instruments certified by the Collector under sub-s. (1) (a). Section 42 (2) provides for the return of those instruments to which sub-s. (1) (b) applies.

Clause (a) of S. 37 of the Act of 1879, corresponding to sub-s. (1) (a) of the present section, required the Collector to deliver the instrument to the person "from whose possession it came into the hands of the officer impounding it or as such person may direct." Under the present Act, the Collector is required under this sub-section, to return the instrument to the officer impounding the instrument. Thus, where the instrument has been impounded by the Sub-Registrar, the Collector is bound under this sub-section to return it to the Sub-Registrar after he has dealt with it under this section.<sup>1</sup> Similarly, where the instrument has been sent to the Collector by the Deputy Magistrate, the Collector has to return it to the Deputy Magistrate.<sup>2</sup>

There is no provision in the Act for the return of those instruments which the Collector himself impounds as not being duly stamped but on further consideration, certifies them under sub-s. (1) (a). It is conceived that in such cases he may return the document to the person from whom it was taken.

**\*41.** If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty of one anna<sup>a</sup> [or half an anna] only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed.

a. Inserted by S. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

### Provincial Amendments

#### BOMBAY

In S. 41 before the words "one anna" insert the words "two annas."

—*Bombay Act II of 1932, Pt. IV S. 15 (2).* [1-4-1932.]

#### C. P. & BERAR.

In S. 41 *Substitute* the words "a receipt" for the words "an instrument chargeable with a duty of one anna or half an anna only or."

—*C. P. and Berar Act V of 1948, S. 2* [30-1-1948].

\*[1879—S. 38; 1869—Ss. 24 (b), 28; 1862—S. 15 (1); 1860—S. 13 (1).]

#### Section 40—NOTE 6

1. ('33) Mad S M page 45. (Citing B Ps. 6 R-Press (Mis.), 9th October 1930; 200-R, Mis, 12th August 1930.)

#### Section 40—NOTE 7

1. ('02) 25 Mad 752 (757) (SB), *Reference under Stamp Act, S. 57.*
2. ('02) 25 Mad 525 (528): 2 Weir 670, *Emperor v. Balu Kupayyan.*



**MADRAS**

In S. 41

- (i) before the words "one anna" insert the words "one and a half annas";  
     —*Madras Act XVI of 1943, S. 4 (c).* [1-10-1943]
- (ii) after the words "half an anna only" insert the following, namely—  
     "or a mortgage of crop (Art. 34 (a) of Sch. IA) chargeable under Cls. (aa) or (bb) of S. 3 with a duty of four annas."—*Madras Acts VI of 1922, S. 12 [25-4-1922] and XVI of 1943 S. 4 (c).* [1-10-1943.]

**SIND**Same as that of Bombay.—*Sind Act I of 1938, S. 2.* [31-3-1938].**RELEVANT REFERENCE TO OTHER ACT.**

For modifications of the provisions of S. 41 in respect of instruments to which the Indian (Specified Instruments) Stamp Act, 1924 (XIII of 1924) applies, see S. 3 of that Act reproduced in Appendix J.

**1. Scope of the section.**—The Act while penalising the omission to duly stamp a document, without regard to the intention of the offender, gives reasonable opportunities for the voluntary rectification of errors or omissions in the matter of stamping. This section provides a remedy for *bona fide* cases of accident, mistake or urgent necessity in respect of all instruments except those mentioned in the section and provides that the duty or the deficiency in duty may be made good by payment to the Collector within one year of the execution of the document, if the omission to duly stamp in the first instance was occasioned by accident, mistake or urgent necessity. Sections 31 and 32 occurring in Chap. III similarly provide that an instrument may be brought to the Collector within one month of its execution or within three months after it has been first received in British India for adjudication and payment of stamp duty. Under this section there must be a voluntary tender of deficient duty without any demand for adjudication as to the duty payable in respect of the instrument; unlike the case under S. 31 no adjudication duty is payable under this section.

**2. Sale certificate.**—Where a sale certificate is not duly stamped the purchaser may apply under this section to the Collector asking for the mistake to be rectified. The Court which issues such certificate has no power to allow it to be stamped after payment of the deficient duty.<sup>1</sup>

**3. Excepted instruments.**—The section does not apply in the case of an instrument chargeable with duty of one anna or half anna or bill of exchange or promissory note. The Collector has, therefore, no power under S. 42 to certify them on payment of deficient duty. The duty chargeable on instruments under Arts. 19, 36, 37 and 52 was raised from one anna to two annas and on demand promissory notes of value over Rs. 250 was raised from one anna to two annas and four annas by Act XLIII of 1923. These instruments if executed after the 30th September 1923 and before the 1st day of April 1924 and duly stamped, according to the old rates, are admitted to the benefit of this section by virtue of S. 3 of the Indian (Specified Instruments) Stamp Act (XIII of 1924).

**4. Collector's certificate for duty paid under the section.**—See Notes on S. 42.



\*42. (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that—

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate.

(b) nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

a. See now the Code of Civil Procedure, 1908 (V of 1908), O. 13 R. 9.

#### SYNOPSIS

1. Scope of the section.
2. Certificate by Collector.
3. Certificate by Court.

4. Endorsement in case of cadjan documents.
5. Levy of duty and penalty on lost instruments. See Note 5 on S. 35.

1. **Scope of the section.**—The section applies only where duty and penalty (if any) leviable in respect of an instrument have been paid. It does not, therefore, apply where an instrument has been held to be duly stamped and admitted in evidence.<sup>1</sup> Nor does the section apply where *only* penalty, and no duty, is payable. Thus, under S. 35, Proviso (b) an unstamped receipt is admissible in evidence, against the person who has given such receipt, on payment of penalty only. Such receipt cannot, on payment of the penalty, be certified by endorsement under sub-s. (1)<sup>2</sup>

Sub-section (2) states the effect of certification made under sub-s. (1). The effect is not retrospective. Thus, where a partition decree not originally duly stamped was certified under sub-s. (1) it was held that proceedings thereunder before the date of the certificate were not validated by the certificate.<sup>3</sup>

\*[1879—S. 39 ; 1869—Ss. 20, 25 ; 1862—S. 16 ; 1860—S. 13 (5). Cf. (1870) 33 & 34 Vict., c. 97—S. 16 (3) ; (1891) 54 & 55 Vict., c. 39—S. 14 (3).]

#### Section 42—NOTE 1

1. ('32) 19 AIR 1932 Mad 765 (767) : 140 Ind Cas 315, *Alagappa Chetty v. Narayanan Chettiar*. (In such a case, S. 36 and not S. 42 (2) applies—But though S. 36 only provides that such “admission” cannot be called in question and differs from S. 42 (2) which uses the words “acted upon” also, S. 36 necessarily implies that the document which has been admitted in evidence can also be “acted upon.”)
2. ('02) 24 All 374 (376) : 1902 All WN 72 (SB), *Reference under Section 57 of Act II of 1899*. (Effect of endorsement will be to render the receipt valid as duly stamped as against any person, whereas under S. 35 proviso (b) it is valid only against the person

who has given the receipt.)

3. ('38) 25 AIR 1938 Mad 307 (311) : 183 Ind Cas 33 (DB), *Satyanandam v. Paramkusam Nammayya*.
- (46) 33 AIR 1946 Mad 437 (440) : ILR (1947) Mad 141 : 227 Ind Cas 360 (DB), *Sethuraman v. Ramanathan*. (Mortgage deed for Rs. 10000 providing for further advances—Mortgagee advancing Rs. 7000 from time to time—Application under S. 31 to collector for adjudication as to proper stamp duty—Collector after following procedure under S. 30 and 40 certifying under S. 42 after payment of deficit duty and penalty that mortgage was duly stamped—Mortgagee is entitled to recover full amount advanced under the mortgage.)



When an instrument has been certified under sub-section (1) of this section as duly stamped, the instrument becomes effective and enforceable and the certificate would have the effect of excluding the operation of S. 26.<sup>4</sup>

**2. Certificate by Collector.**—A certificate by the Collector under this section is conclusive as regards the question of stamp duty. It is not competent for a civil Court to go behind it.<sup>1</sup> So also, after the Collector has endorsed the certificate under this section, the Chief Controlling Revenue-authority cannot exercise its powers of control under S. 56 (1) nor can it refer the case to the High Court under S. 57<sup>2</sup>.

Prior to certification, however, the matter is different. Thus, where the Collector requires the payment of duty and penalty which are not paid and hence there is no certification, the Chief Controlling Revenue-authority can interfere and refer the case to the High Court<sup>3</sup>. So also a civil Court, before which the instrument is brought, is not in the absence of a certificate bound by the opinion of the Collector as regards stamp duty and may, therefore, admit the instrument as duly stamped if, in its opinion, it is duly stamped.<sup>4</sup>

Where the Collector certifies a document as duly stamped in a case to which the provisions as to certification do not apply, what is the effect of the certificate? On this question, two decisions of the Allahabad High Court<sup>5</sup> conflict with each other.

In the undermentioned case<sup>6</sup> the Court impounded a document and sent it to the Collector and decided the suit. The Collector, however, recovered duty and penalty and certified it under this section, subsequent to the decision of the Court. In appeal from the decision the case was remanded for decision after admission of the instrument. It is submitted that the decision is not correct, as the lower Court's judgment cannot be said to be wrong on the materials before it.

The powers of the Collector under sub-s. (1) of this section to make endorsements on instruments have been conferred upon all officers in charge of treasuries

Section 42—NOTE 2

1. ('41) 28 AIR 1941 Lah 65 (66) : ILR (1940) Lah 628 : 193 Ind Cas 368 (SB), *Nandlal v. Emperor*. (Collector's endorsement that document is properly stamped—Court cannot under S. 42 (2) refuse to admit it on the ground that it is not properly stamped.)
- ('29) 16 AIR 1929 Nag 272 (272) : 119 Ind Cas 680, *Ajodhya Prasad v. Parasharam*. (Where a document purports to be a deed of adoption but it is in reality a deed of gift and is stamped as an authority to adopt, if the Collector validates and certifies it under S. 42, his decision is final and binding and cannot be set aside by a Civil Court.)
2. ('02) 25 Mad 752 (758, 759, 766) (SB), *Reference under Stamp Act, S. 57*. (Per Bhashyam Ayyangar, J.; Moore, J., contra.)
- ('18) 5 AIR 1918 All 181 (182) : 40 All 128 : 47 Ind Cas 299 (FB), *In the matter of Khub Chand*. (NOTE—The remarks "Under S. 40 sub-s. (2), this certificate is for the purpose of Stamp Act conclusive evidence of the matter stated therein" are obviously wrong for the certificate not being under S. 40 (1) (a), S. 40 (2) could not apply. Instead of "S. 40 sub-s. (2)" it must be "S. 42 sub-s. (2).")

[See ('26) 13 AIR 1926 Bom 51 (52) : 91 Ind Cas 299 (FB), *Usuf Dadabhai v. Chand Mohamad*.]

Also see S. 56 Note 1 and S. 57 Note 3.

3. ('32) 19 AIR 1932 Lah 495 (496) : 13 Lah 745 : 138 Ind Cas 758 (SB), *Thakardas v. Emperor*.

('02) 25 Mad 752 (760) (SB), *Reference under Stamp Act, S. 57*.

4. ('98) 22 Bom 632 (635) (FB), *Hari Bai v. Krishnarav*. (A Sub-Registrar impounded a document and sent it to Collector who ordered duty and penalty to be paid but it was not paid. A Subordinate Judge asked for the same document and the Collector sent it to him. The Court was of opinion that it was duly stamped. Held that Collector's decision was not binding on the Court.)

5. ('81) 3 All 115 (117) (DB), *Girdhari Das v. Jagan Nath*. (It is conclusive.)

('26) 13 AIR 1926 All 359 (359) : 48 All 332 : 93 Ind Cas 63, *Chotey Lal v. Girraj Kishore*. (It is not conclusive, 3 All 115 distinguished.)

Also see S. 40 Note 3.

6. ('07) 4 All L Jour 205 (206) : 1907 All W N 38, *Umda Bibi v. Tikai Ram*.

7. ('34) Pun S M Part I-B, Ch. 3, para 29. (Citing Punjab Govt. Notification No. 1514-St. dated 1-9-1936.)



in the Punjab except Lahore.<sup>7</sup> For such powers conferred upon officers in other Provinces, see Miscellaneous Notifications given in Appendix G.

See also Note 1.

**3. Certificate by Court.**—A certificate by a Court under sub-s. (1) is conclusive. Under sub-s. (2), the instrument certified cannot be refused in evidence if it subsequently comes before a civil Court on the ground of its being not duly stamped.<sup>1</sup> The certificate is binding on the Collector also, and he cannot impound such instrument under S. 33 and proceed thereafter to levy further deficiency and penalty under S. 40. His only remedy is by way of an application to the appellate Court under S. 61.<sup>2</sup>

**4. Endorsement in case of *cadjan* documents.**—In the case of a *cadjan*<sup>1</sup> document, the certificate required by this section is to be endorsed on a certified copy of the document on plain paper, which should be attached to the *cadjan* document.<sup>2</sup>

**5. Levy of duty and penalty on lost instruments.**—See Note 5 on S. 35.

**\*43. The taking of proceedings or the payment of a penalty under this Chapter**  
Prosecution for in respect of any instrument shall not bar the prosecution of any  
offence against person who appears to have committed an offence against the  
Stamp-law. Stamp-law in respect of such instrument :

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

#### SYNOPSIS

1. Scope of the section.
2. Proviso.
3. "Unless it appears to the Collector."
4. Intention to evade payment of proper duty.

**1. Scope of the section.**—This section provides that if a person has committed any offence against the Stamp-law in respect of any instrument, the fact that he has paid penalty under this chapter in respect of that instrument will not bar his prosecution for that offence.<sup>1</sup> Such prosecution, however, shall be instituted only if it appears to the Collector that the offence was committed with an intention to evade the payment of proper duty.

The object of this section is to guard against frivolous or indiscriminate prosecutions.<sup>1a</sup> Under S. 62 (1) (b) mere executing or signing otherwise than as a witness

\*[1879—S. 40 ; 1869—Ss. 22, 24.]

#### Section 42—NOTE 3

1. ('41) 28 AIR 1941 Lah 65 (67) : I L R (1940) Lah 628 : 193 I. C. 368 (SB), *Nand Lal v. Emperor*.
2. ('41) 28 AIR 1941 Lah 65 (67) : I L R (1940) Lah 628 : 193 Ind Cas 368 (SB), *Nand Lal v. Emperor*.

#### Section 42—NOTE 4

1. Leaves of the Palmyra tree, on which the natives of South India write with an iron style—Ram Nath Iyer's *Law Lexicon of British India*, 1940 Edn.
2. ('33) Mad S M page 46. (Citing B P 124,

13th March 1895.)

#### Section 43—NOTE 1

1. See ('40) Bihar S M p. 126 (126). (It is not competent to a Collector to make a prosecution under S. 61 of the Act of 1879 (now S. 62) depend upon whether his order under S. 37 (b) of that Act (now S. 40 (1) (b),) had been obeyed or not (Government Order No. 4346 of 4th December (1888).)
- 1a. ('26) 13 AIR 1926 All 389 (390) : 93 Ind Cas 694 (DB), *Emperor v. Pannalal*, ('84) 7 Mad 537 (538) : 1 Weir 899 (DB), *Queen-Empress v. Palani*.



any instrument chargeable with duty without the same being duly stamped is an offence. The offence is complete as soon as such instrument is executed or signed without properly stamping it. The question of intention to evade duty is not relevant under that section.<sup>2</sup> But the effect of this section is that where the party has paid the penalty under this chapter, he cannot be prosecuted unless it appears to the Collector that the person has committed the offence with the intention of evading the proper stamp duty. Hence, an opportunity must be given to a party to pay the penalty before the Collector exercises his discretion of sanctioning a prosecution under S. 70.<sup>3</sup> Where no opportunity has been given to the accused to pay the duty and penalty and he is free from any criminal intent, his conviction will be set aside.<sup>4</sup>

The result is the same whether the penalty is paid under S. 35, S. 40 or S. 41. As stated in *Empress v. Soddanund Mahanty*<sup>5</sup> it is clear from these provisions that the intention of the Legislature is, in the first place, to compel the payment of the stamp duty, together with the penalty. By the payment of the stamp duty the revenue would be protected from loss, and the exaction of a small money penalty would be a sufficient punishment in the large majority of cases in which omission to stamp at all or to stamp duly arises from negligence, inadvertence or ignorance of the provisions of the Stamp-law. The severer proceeding of a criminal prosecution is intended for those cases only in which there is an intention to evade the Stamp-law and before a criminal prosecution can be instituted it is incumbent upon the Collector to form an opinion whether such intention existed.<sup>6</sup>

**2. Proviso.**—The proviso to this section deals with those instruments only in respect of which the penalty under this chapter *has been paid*. No prosecution can be instituted in respect of such instruments unless the Collector satisfies himself that there was an intention to evade the payment of proper duty.<sup>1</sup> The instruments in respect of which the parties are required to pay deficit duty and penalty under this chapter but have failed or refused to pay the same, are not covered by the proviso and the parties are liable to be prosecuted whether there is an intention to evade duty or not, unless there are special reasons for indulgent treatment, such as the inability of the parties to pay the penalty imposed.<sup>2</sup> Promissory notes, bills of exchange and instruments chargeable with a duty of one anna or half an anna except receipts, are not instruments in respect of which penalty can be paid under this chapter and hence no question of intention to evade duty can arise in prosecutions in respect to them.

There is no provision in this chapter which makes it obligatory on the Collector to require the payment of deficit duty and penalty in respect of an instrument which is, on the face of it and on the facts stated therein, duly stamped, but which

2. ('26) 13 AIR 1926 All 389 (390) : 93 Ind Cas 694 (DB), *Emperor v. Pannalal*.

('89) 12 Mad 231 (233) : 1 Weir 903 (DB), *Queen-Empress v. Venkatrayadu*.

Also see S. 62 Note 2.

3. ('83) 7 Bom 82 (83) (DB), *Empress v. Janki*. ('82) 8 Cal 259 (261) : 10 Cal L Rep 365 (DB), *Empress v. Soddanund Mahanty*.

Also see S. 62 Note 4 and S. 70 Note 1.

4. ('21) 8 AIR 1921 Pat 233 (234) : 64 I. C. 286, *Namai Charan Sahu v. Emperor*. (Un-Stamped-receipt.)

('82) 8 Cal 259 (261) : 10 Cal L Rep 365 (DB), *Empress v. Soddanund Mahanty*.

[See also ('33) 20 AIR 1933 Lah 959 (959) :

146 Ind Cas 1055, *Maya Shah v. Emperor*.] Also see S. 62 Note 4.

5. ('82) 8 Cal 259 (261) : 10 Cal L Rep 365 (DB).

6. See ('76) 1876 Pun Re No. 23 (Cr) page 38 (39, 40) (DB), *The Crown v. Prem Singh*. Section 43—NOTE 2

1. ('33) Mad S M p. 46 (46). (Citing B P 3126, 15th December 1882, G O 863 R. D. 16th July 1883.)

[See ('89) 12 Mad 231 (233) : 1 Weir 903 (DB), *Queen-Empress v. Venkatrayadu*.]

2. ('33) Mad S M p. 46 (46). (Citing B P 3126, 15th December 1882, G O 863 R. D. 16th July, 1883.)



has failed to state the facts affecting the amount of stamp duty fully and truly. The instrument is, therefore, outside the scope of the proviso and no inquiry into the intention of the party is necessary before sanctioning his prosecution.<sup>3</sup>

3. “Unless it appears to the Collector.”—Under the proviso to this section no prosecution in respect of the instruments on which penalty under this chapter is paid, can be instituted unless it appears to the Collector that the instrument was not stamped with the intention of evading the payment of proper duty. The proviso is mandatory in its terms and before a prosecution is sanctioned in respect of an instrument covered by this section the Collector must come to the clear finding that there exists an intention to evade the payment of proper duty.<sup>1</sup> He is not required to make a formal inquiry or to record a proceeding when he grants a sanction for prosecution,<sup>2</sup> but a sanction in writing there must be, as such an express sanction would be evidence that he has considered the question of intention, and the absence of any kind of sanction would indicate the possibility that the question was never considered.<sup>3</sup> Where the Collector gives a written sanction for prosecution, it may be presumed that he has governed his decision by the proviso to this section<sup>4</sup> and has satisfied himself as to the existence of an intention to evade duty. The Magistrate trying the offence is, however, not bound by the opinion formed by the Collector at the time of sanctioning the prosecution, and though such an intention may not be the ingredient of the offence, the Magistrate should consider the question of the intention and hear the statement of the accused and any evidence which he may offer in reference to it, in order to decide whether any or what penalty should be levied.<sup>5</sup>

4. **Intention to evade payment of proper duty.**—The question of intention to evade the payment of proper stamp duty was not one which could properly arise in case of instruments chargeable under the Regulation XVIII of 1827. Section 13 of Act XXXVI of 1860 first rendered that question important and S. 15 of Act X of 1862 made the point still more explicit.<sup>1</sup>

As to what amounts to an intention to evade the payment of proper duty is a question of fact which is to be ascertained from the circumstances of each case. Thus, where an unstamped *roka* contained a reference to the fact that it was not stamped and also an agreement on the part of the executant that if litigation became necessary, he would pay whatever expenses might be incurred in stamping the document, it was held that the instrument showed on the face of it an intention of the parties to evade the payment of duty.<sup>2</sup>

A clause in a bond written on a plain paper was to this effect: “And inasmuch as we are urgently in want of money and are unable to procure a stamp at the moment, we have executed this bond on plain paper. Should it be necessary for you (i.e., the plaintiff) to bring a suit against us (i.e., the executants) whatever penalty you may have to pay, shall be made good by us with interest.” It was held that the clause in itself did not amount to an agreement to evade the Stamp-law, though

3. ('89) 12 Mad 231 (233) : 1 Weir 903 (DB), *Queen-Empress v. Venkatrayadu*.

Section 43—NOTE 3

1. ('21) 8 AIR 1921 Pat 233 (234) : 64 Ind Cas 286, *Namai Charan Sahu v. Emperor*.  
(‘28) 108 Ind Cas 427 (429) (Pat), *Rang Lal Sahu v. Emperor*.

2. ('84) 7 Mad 537 (538) : 1 Weir 899 (DB), *Queen-Empress v. Palani*.

3. ('33) 20 AIR 1933 Lah 959 (959) : 146

Ind Cas 1055, *Maya Shah v. Emperor*.

4. ('84) 7 Mad 537 (538) : 1 Weir 899 (DB), *Queen-Empress v. Palani*.

5. ('77) 2 Cal 399 (403) (FB), *Empress v. Dwarkanath Chowdhury*.

Section 43—NOTE 4

1. ('81) 5 Bom 621 (629) (DB), *Kastur Bhavani v. Appa*.

2. ('75) 24 Suth W R 88 (89) (DB), *Prosunno v. Tripoora*.



it would be an evidence from which the Judge might have inferred, as a matter of fact, an intention of the parties to evade the duty, in which case, he ought to allow oral evidence to the contrary to rebut the inference.<sup>3</sup>

Under an instalment bond, a loan of Rs. 30,000 was payable by instalments extending over 21 years. The instalments carried interest and the sum thus secured by the bond amounted to Rs. 76,000. The bond was stamped for Rs. 30,000 under the advice of the Sub-Registrar. It was held that there was no intention to evade the payment of proper duty in the circumstances of the case.<sup>4</sup>

Certain persons acted as arbitrators in a dispute and gave an award on an unstamped paper. The award was filed in a civil Court and was impounded and sent to the Collector who prosecuted and sentenced the arbitrators to pay a fine. On appeal it was held that as the arbitrators did not claim any benefit under the award and could receive no advantage from the non-payment of the stamp duty, they could not have an intention to evade it.<sup>5</sup>

A mortgaged his property to B who assigned, for consideration, his mortgagee rights to C by endorsement which was not stamped or registered. C sued upon the mortgage but the suit was dismissed by the Court on the ground that the endorsement being not stamped could not pass any rights to C. B and C, thereupon, referred their dispute to arbitrators who gave an award to the effect that C should return the deed to B and B should pay money to C. C filed a suit to enforce the award which was contended to be vitiated by an intention to evade the payment of duty. It was held that unless the contrary was proved, the submission by B and C of their dispute to arbitrators could not be said to have been done with an intention to evade the payment of the stamp duty.<sup>6</sup>

**\*44. (1) When any duty or penalty has been paid under section 35, section 37, section 40 or section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.**

**(2) For the purpose of such recovery, any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.**

**(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.**

#### SYNOPSIS

1. Legislative changes.
2. Scope of the section.
3. Suit for contribution.

4. Mode of recovery when defaulter is party to proceedings—Sub-section (3).
5. Penalty and duty illegally levied.
6. Costs awarded under Section 148, Cr. P.C.

\*[1879—S. 41.]

3. ('69) 3 Beng L R (AC) 329 (331) : 11 Suth W R 553 (DB), *Sashi Bhusan v. Tarachand*.  
4. ('80) 5 Cal 311 (313) (DB), *Sonaka Chowdrain v. Bhoobunjoy Shaha*.

5. ('82) 8 Cal 259 (262) : 10 Cal L Rep 365 (DB), *Empress v. Soddanund Mahanty*.  
6. ('82) 4 All 462 (473) : 1882 All W N 106 (DB), *Shankarlal v. Sukhrani*.



1. **Legislative changes.**—Sub-section (3) is new. Sub-sections (1) and (2) correspond to S. 41 of the Stamp Act of 1879. There was no corresponding provision in the earlier Stamp Acts.

2. **Scope of the section.**—When the duty and penalty in respect of an instrument not duly stamped are recovered from a person who was not liable for the proper stamping of the instrument, this section gives a right to the person paying the duty and penalty to recover the same from the person guilty of the default in regard to the proper stamping of the instrument.<sup>1</sup>

Sub-section (2) makes the certificate in respect of the instrument conclusive evidence of the matters stated therein for the purposes of recovery. Sub-section (3) prescribes the mode of recovery when the person in default is a party to the proceedings in which the duty and penalty are paid.

3. **Suit for contribution.**—The section only gives a right to an innocent party, not guilty of any default, to recover the penalty and duty he has been obliged to pay, from the person in default. The section is not intended to enable one of several persons, who were under a common duty to pay the proper stamp duty to claim from the others, contribution in respect of the duty and penalty which he has been compelled to pay owing to their common default. Such a suit for contribution is not maintainable.<sup>1</sup>

4. **Mode of recovery when defaulter is party to proceedings—Sub-section (3).**—When the person through whose default the duty and penalty are required to be paid is a party to the suit or proceedings in which the duty and penalty are paid by the opposite party, the amount can be recovered from the person in default, by including the amount in any order as to costs passed against him. But if the amount is not so included in the order as to costs then no fresh suit is maintainable to recover the duty and penalty paid.<sup>1</sup>

#### Section 44—NOTE 2

1. ('39) 1939 Nag L Jour 364 (365), *Roopchand Motiram v. Secretary of State*.  
(08) 30 All 271 (272, 273) : 5 All L Jour 262 (DB), *Secretary of State v. Basharat-Ullah*. (Dissented from in AIR 1940 Lah 315 : ILR (1940) Lah 637 (SB) regarding power of Collector to recover the penalty and duty from person not liable for the same compulsorily.)

#### Section 44—NOTE 3

1. ('46) 33 AIR 1946 Mad 50 (50) : 223 Ind Cas 178, *Sundaram Reddi v. Pattabhirami Reddi*. (Partition between two brothers—Stamp duty not paid—Duty and penalty collected from one brother in proceedings before Collector. He has no right to recover half share from the other brother.)  
(36) 23 AIR 1936 All 151 (152) : 160 I. C. 70, *Parshottam Ram v. Sheo Mangal Ram*. (An award was made in a partition proceeding between the plaintiff, father of defendants 1 and 2 and father of defendant 3, plaintiff himself being one of the persons bound to provide for the stamp. Plaintiff brought a suit against defendants 1 and 2 to get the award filed. The award was insufficiently stamped and plaintiff had to pay deficit duty and penalty.)

†('16) 3 AIR 1916 Mad 672 (673) : 31 Ind Cas 285 (DB), *Raman Chetty v. Nagappa Chetty*. (Partition deed between plaintiff and defendant. Under S.29 plaintiff himself being one of the parties was to bear the stamp. Plaintiff producing the document in a suit was required to pay the duty and penalty. Plaintiff sued for contribution from defendant.)

[See ('63) 1 Mad HCR 124 (126) (DB), *Garuda Reddi v. Janakayya*. (When both parties have united in endeavouring to evade the law which prescribes the use of stamp, to decree the reimbursement of the amount to plaintiff would be contrary to the policy of law which governs such question.)]

#### Section 44—NOTE 4

1. ('37) 24 AIR 1937 Mad 763 (764) : 174 Ind Cas 20, *Panakala Rao v. Kumaraswami*. (Document admitted in evidence without stamp objection and decree passed. After passing decree Court recovering duty and penalty from plaintiff. Amount not included in costs. Fresh suit is barred.)  
(36) 23 AIR 1936 All 151 (152) : 160 Ind Cas 70, *Parshottam Ram v. Sheo Mangal Ram*.  
(27) 14 AIR 1927 All 654 (654) : 49 All 501 : 100 Ind Cas 737, *Ram Singh v. Man Singh*. (Where a mortgagee, in a suit on mortgage, paid the deficient stamp duty on mortgage)



The undermentioned decisions<sup>2</sup> holding a contrary view and decided before the enactment of sub-s. (3) are no longer good law.

It is only against the party who is liable to bear the expenses of stamping that the amount of stamp duty and penalty can be awarded as costs under sub-s. (3). Such amount cannot be included in the costs awarded against any other party to the suit or proceeding.<sup>3</sup>

**5. Penalty and duty illegally levied.**—This section does not enable the plaintiff to recover from the defendant the duty and penalty paid in respect of an instrument in respect of which the defendant was to bear the expenses of the stamp, when the duty and penalty are illegally levied from the plaintiff.<sup>1</sup> Thus, where a document produced by the plaintiff was admitted in evidence without any stamp objection by the trial Court, but the appellate Court levied the duty and penalty and recovered it from the plaintiff, a procedure in contravention of S. 61 of the Stamp Act, it was held that the plaintiff could not recover the amount by way of costs from the defendant.<sup>2</sup>

**6. Costs awarded under Section 148, Cr. P. C.**—Before the amendment of S. 148 of the Criminal Procedure Code in 1923, it was held in the undermentioned decisions<sup>1</sup> that a Magistrate had no jurisdiction to include in the costs awarded under that section the stamp duty and penalty paid by a party. The present section, i.e., S. 148 of the Criminal Procedure Code, gives wider powers to the Magistrate as regards the awarding of costs incurred and hence the decisions referred to above are no longer good law.

See A. I. R. Commentaries on the Criminal Procedure Code, 2nd (1941) Edition, section 148, Note 7.

**\*45. (1) Where any penalty is paid under section 35 or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.**

Power to revenue authority to refund penalty or excess duty in certain cases.

\*[1879—S. 42 ; 1869—S. 42 ; 1862—S. 15 (6) ; 1860—S. 13 (3), Cf. (1870) 33 & 34 Vict., C. 97—S. 15 (2) (b) ; (1891) 54 & 55 Vict., C. 39—S. 15 (3) (b).]

in order to get a decree but did not apply to the trial Court to include the amount so paid in the costs of the suit and brought a separate suit for recovering the sum, held that suit was not maintainable.)

Also see S. 29 Note 15.

2. ('83) 6 All 70 (71) : 1883 All W N 211 (DB), *Ishar Das v. Masud Khan*.

('84) 1884 All W N 328 (329) (DB), *Atmaram v. Sardar Kuar*.

3. ('91) 1891 Bom P J 12 (DB), *Manohar Ganesh v. Keshavram Jibhai*. (In an execution case the decree-holder paid the stamp duty and penalty on a surety bond executed under S. 545, C. P. C. of 1882 by the surety for the defendant, in order that the bond may be admitted against the surety. The

subordinate Judge included this amount in the costs of execution against the defendant. Held, the payment could not be regarded as costs in execution.)

#### Section 44—NOTE 5

1. ('24) 11 AIR 1924 Oudh 110 (110) : 73 Ind Cas 307, *Rajendra Narayan v. Ghafoor Khan*.

2. ('24) 11 AIR 1924 Oudh 110 (110) : 73 Ind Cas 307, *Rajendra Narayan v. Ghafoor Khan*.

#### Section 44—NOTE 6

1. ('13) 19 Ind Cas 306 (306) (Mad), *Tummala Ganta Kotiah v. Popuri Peddanna*.

('12) 14 Ind Cas 761 (762) (DB) (Mad), *Popuri Peddanna v. Tummala Ganta Kotiah*.



(2) Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

#### RELEVANT REFERENCE TO OTHER ACT.

N.W.F.P.

The reference to the Chief Controlling Revenue-authority is to be construed as referring to the Revenue Commissioner. See S. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901).

#### SYNOPSIS

- |   |                     |
|---|---------------------|
| 1. Scope of the section.                    | 3. Sub-section (1). |
| 2. Delegation of powers under this section. | 4. Sub-section (2). |

1. **Scope of the section.**—Section 39 empowers the *Collector* to refund any portion of penalty paid under S. 35 in excess of five rupees or the whole penalty in certain cases. This section invests the *Chief Controlling Revenue-authority* with a discretionary power to refund the whole or part of any penalty that has been levied from a person. The section also gives the Chief Controlling Revenue-authority power to refund any excess stamp duty that may have been charged and paid by a party. The power given under this section is not one of *remission* of penalty or duty but of *refund* and can be exercised only where the *excess* duty or penalty has been charged and *paid* under S. 35 or S. 40.

The powers of refund under this section can be exercised only on a written application. An application for refund of penalty has to be made under sub-s. (1) within one year of the date of payment of such penalty. But an application for refund of excess duty has to be made under sub-s. (2) within three months of the order charging the same. It is difficult to understand as to why the Legislature provided different periods of limitation for the two cases.<sup>1</sup>

The procedure to obtain a refund laid down by this section will apply even in case of documents executed prior to the coming into force of this Act.<sup>5</sup>

An order admitting a document in evidence on payment of deficient duty and penalty is not appealable as a decree. The party on whom the penalty has been imposed has the only remedy of applying for refund under this section.<sup>3</sup>

In the "Executive Instructions" contained in the Central Provinces Stamp Manual, the following occurs :

"The provisions of S. 45 limit the occasion on which the Chief Controlling Revenue-authority may refund a penalty. But it is open to the Provincial Government in the exercise of its general powers to grant a refund either of duty or penalty in any given case."<sup>4</sup>

It is not clear under what provision the Provincial Government can be said to have this general power of refund.

\*[1879—S. 42; 1869—S. 42; 1862—S. 15 (6); 1860—S. 13 (3). Cf. (1870) 33 & 34 Viet., C. 97—S. 15 (2) (b); (1891) 54 & 55 Vic., Q. 39—S. 15 (3) (b).]

#### Section 45—NOTE 1

1. See ('97) 7 Mad L Jour 467 (470) (Journal.)
2. ('82) 5 Mad 394 (396) : 7 Ind Jur 16 (SB),  
Reference under Stamp Act, Section 46. (Case

- under the Act of 1879—Per Kernan, J.)  
Also see S. 39 Note 1
3. ('80) 5 Cal 311 (314) (DB), *Sonaka Chow-drain v. Bhobunjoy Shaha*.
4. ('42) C P S M page 120.



**2. Delegation of powers under this section.**—The power of the Chief Controlling Revenue-authority to refund penalties or excess duty under this section has now been delegated by Government under S. 76A (b) to all District Officers in Bihar<sup>1</sup> and to the Collectors of districts in the Madras Presidency.<sup>2</sup>

Commissioners of Divisions in the Punjab have been empowered to grant refunds—

- (i) under sub-section (1) when the amount of the penalty refunded does not exceed Rs. 500 ; and
- (ii) under sub-section (2) when the amount of the excess duty does not exceed Rs. 50.<sup>3</sup>

**3. Sub-section (1).**—The power of refund of penalty under this sub-section can be exercised only on a written application made within one year from the date of the payment of penalty.

The discretion to refund penalty can be exercised even in cases where the penalty is lawfully imposed. In the undermentioned case<sup>1</sup> a deed of settlement stamped in good faith as a trust-deed was admitted in evidence on payment of additional duty and penalty under S. 35. On an application for refund of the penalty under this section, the Board of Revenue while ordering the refund observed as follows :

“There is no indication whatever that the document was not originally stamped in good faith : the stamp was passed by the Registering Officer, and remained unquestioned for a series of Courts. The question ultimately was not raised on behalf of Government but as a move in litigation by a party to a suit. It has been a successful move, but I do not think a penalty is called for in the interest of the revenue. The penalty may therefore be refunded.”

**4. Sub-section (2).**—This sub-section is new and its effect is to give an informal right of appeal from the Collector to the Chief Controlling Revenue-authority.<sup>1</sup> Under the Act of 1879 the Board of Revenue had no power to revise or modify a Collector's decision as to the proper stamp duty and to order a refund of excess duty wrongly levied. It could only refer the case to the High Court under S. 46 (now S. 57) of that Act for determination of proper stamp duty and if the High Court decided that the duty chargeable in respect of a particular document was less than that actually imposed by the Collector, the Board was entitled but not bound to order a refund of the excess duty in disposing the case in accordance with the High Court's opinion under S. 48 (now S. 59).<sup>2</sup> The power as to refund of excess duty is now expressly conferred by this sub-section and not by S. 56 (1) which was also newly inserted in the present Act.<sup>3</sup>

The Chief Controlling Revenue-authority when ordering a refund of excess stamp duty shall at the same time order the payment to the applicant of a sum

#### Section 45—NOTE 2

1. ('40) Bihar S M page 127. (Citing Government Notification No. 9063 F., dated the 9th July 1915).
2. ('33) Mad S M page 48. (Citing G. O. 2911, S. R., 6th October 1914 B P 238/1299 R. Mis., 26th October 1914.)
3. ('34) Punjab S M Part I-B p. 15. (Citing Punjab Government Notification No. 40573 F.—Genl., dated the 24th December 1932.)

#### Section 45—NOTE 3

1. ('24) 2 Pat L R (Cr.) 18 (20), *Mt. Lilawati Debi v. Secretary of State*.

#### Section 45—NOTE 4

1. See Statement of Objects and Reasons, Cl. 45.
2. ('84) 7 Mad 155 (159, 160) (SB), *Reference under Stamp Act, S. 46*.
3. ('02) 25 Mad 752 (761, 762) (SB), *reference under Stamp Act, S. 57*.



equal to the court-fee paid on his application for the refund.<sup>4</sup> Excess duty charged by a *Court* under S. 35 can also be refunded under this section.

**\*46.** (1) If any instrument sent to the Collector under section 38, sub-section Non-liability for loss of instruments sent under section 38. (2), is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding of such instrument.

1. "Person sending the same."—This means the person who after impounding the document sends it to the Collector under S. 38 (2). Such person is not liable for the loss or damage of the document during transmission.

2. "May require a copy thereof to be made."—This is to provide against the contingency of the loss or damage of the document during transmission and is for the benefit of the person whose document, after being impounded, is sent to the Collector. The person whose document is impounded and is being sent to the Collector may, if he so wishes, require a copy of such document to be made at his expense, and authenticated by the person impounding such document.

A copy made under this section is not liable to stamp duty. (See Exemption (a) to Art. 24.)

**† 47.** When any bill of exchange<sup>a</sup> [or promissory note] chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill <sup>b</sup>[or note], and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill <sup>b</sup>[or note] shall, so far as respects the duty, be deemed good and valid :

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill <sup>b</sup>[or note].

a. Substituted for the words "promissory note or cheque" by S. 5 of the Indian Finance Act, 1927 (V of 1927).

b. Substituted for the words "note or cheque," *ibid*.

\*[1879—S. 43 ; 1869—S. 25 ; 1862—S. 21 ; 1860—S. 13 (8).]

†[1879—S. 44 ; 1869—S. 26 ; 1862—S. 24. Cf. (1870) 33 & 34 Vict., C. 97—S. 54 (2) (3) ; (1891) 54 & 55 Vict., C. 39—S. 38 (2), (3).]

4. ('31) Beng S M Vol 1 page 42. (Citing Government of India's Order No. 1297 S. R., dated the 7th March, 1902, addressed to the Government of Burma, received with Bengal Government Order No. 1968, S.R., dated the 19th idem.)

('33) Mad S M page 48. (Citing B. Ps. 70/776, Mis., 25th March 1902 ; 1250, Mis., 22nd August 1915.)

('40) Bihar S M page 127. (Citing Government of India's Order No. 1297-S. R., dated the 7th March 1902, received with Bengal Government Order No. 1968-S. R., dated the 19th idem.)

('34) Punjab S M Part I-B page 14. (Citing Government of India Finance Department No. 1297-S. R., dated 7th March 1902.)



**1. Scope.**—Formerly this section had a wide-scope and included cheques, bills of exchange payable on demand and all promissory notes payable on demand. By the Indian Stamp (Amendment) Act, XLIII of 1923, the stamp duty on promissory notes payable on demand and of value exceeding Rs. 250 was raised and by the Indian Finance Act, V of 1927, demand bills and cheques were relieved of duty. The effect of all this is that the section as it now stands has a limited scope. It applies only to bills of exchange payable otherwise than on demand but not more than one year after date or sight and for values not exceeding Rs. 200 when drawn in sets of three, and to promissory notes payable on demand of values not exceeding Rs. 250. (See Arts. 13 and 49.)

**2. "Person to whom it is so presented."**—Such person, in the case of a bill of exchange, is the *drawee*. He may, therefore, affix the stamp and charge the duty against the *drawer*, who, according to S. 29, is the person originally liable to pay the stamp duty.

In the case of a promissory note the person to whom it is presented for payment would be the *maker* of the promissory note and the same person would, under S. 29, be originally liable to pay stamp duty. This section would thus enable a maker of a promissory note who ought to bear the expense of stamp duty and has not done so, to deduct the duty from the amount payable under the promissory note. Pushed to its logical conclusion, the section allows the defaulter to take advantage of his own default. Farran, J. in *Bhawanji Harbhum v. Devji Punja*<sup>1</sup> remarked :

"It is a curious anomaly (if it be so) that the promisor in the case of an unstamped promissory note, who is the person who ought originally to have stamped it, should be at liberty to deduct the value of the stamp from the amount which he pays in discharge of his note."

The drafting of this section, so far as promissory note is concerned, is thus defective. What the Legislature in the case of promissory note should have said is that the payee might affix the stamp and charge the value of it against the maker. The section requires to be amended to remove the anomaly.

**3. May affix thereto the necessary adhesive stamp.**—This section is an enabling one. It provides that the person to whom a bill of exchange or promissory note chargeable with one anna duty is presented unstamped for payment, need not refuse payment on that account but may affix a one anna stamp thereto and cancel it and then make payment.<sup>1</sup>

**4. Intermediate holder.**—This section enables only the drawee to whom a bill is presented for payment to stamp it and to recover the cost of such stamp from the drawer. The section cannot be interpreted as permitting the bill being stamped by an intermediate holder of the bill who is neither the drawer nor the drawee in order to validate such bill and thereby enable himself or a subsequent holder of the bill to sue the drawer.<sup>1</sup>

#### Section 47—NOTE 2

1. ('95) 19 Bom 635 (639) (DB).

#### Section 47—NOTE 3

1. ('95) 19 Bom 635 (639) (DB), *Bhawanji Harbhum v. Devji Punja*.

#### Section 47—NOTE 4

1. ('25) 12 AIR 1925 Sind 241 (241) : 19 Sind L R 12 : 86 Ind Cas 357 (DB), *S. Bhawanji Narsi v. Assan Pitamberdas*. (Payee of bill affixing stamp and cancelling it and then endorsing bill to plaintiff—Held bill

was not duly stamped.)

- ('25) 12 AIR 1925 Bom 520 (520) : 90 Ind Cas 689, *Dayaram v. Chandulal Dayabhai*. (Stamp cancelled by intermediate holder. Bill held not duly stamped.) (1890) 6 T L R 292 (292), *Hobbs v. Cathi*. (A cheque which was stamped by an intermediate holder not the drawer nor the banker is improperly stamped and a subsequent *bona fide* holder of the bill cannot recover on it.)



**48.** All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the moveable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue.

**1. Scope and applicability of the section.**—This section was newly added in the present Act. Under the previous Acts the stamp duty and penalty could not be enforced by levy or in any other way, the only effect of non-payment being that the instrument in respect of which the payment of duty and penalty was ordered could not be admitted in evidence.<sup>1</sup>

The section provides a simple procedure for the recovery of duties and penalties. It authorizes the Collector to recover them in either of the two following ways: (1) by distress and sale of the movable property of the person from whom they are due; and (2) by any other process for the time being in force for the recovery of arrears of land-revenue.

This is the only provision in the Act for realization of duties and penalties under Chap. IV by legal process when it is not voluntarily paid.<sup>2</sup> The section cannot be applied for enforcing the payment of fines imposed under the various sections of Chap. VII of this Act. But where the Chief Controlling Revenue-authority or any officer authorised by it compounds any offence under that chapter, cl. (3) of S. 70 provides that the amount of any such composition shall be recovered in the manner provided by this section.

A civil Court can also recover stamp duty and penalty under the provisions of S. 35. But it can do so only before an instrument is admitted in evidence. Where, therefore, an insufficiently stamped instrument is admitted in evidence and a decree is passed on it through oversight without the deficiency in stamp and the requisite penalty having been recovered by the Court, S. 35 will not apply; but, as that section is contained in Chap. IV, this section will apply and the duty and penalty can be recovered under it.<sup>3</sup>

**2. "Person from whom the same are due."**—Suppose the person who tenders a document in evidence is not the person who is bound to bear the expenses of stamp under S. 29. Can such a person be proceeded against under this section? There is a conflict of decisions on this question. According to the Lahore High Court such a person cannot be proceeded against under this section and only the person liable under S. 29 can be so proceeded against.<sup>1</sup> The High Court of Allahabad has, however, taken a contrary view and has held that the duty and penalty can be recovered from such person in the first instance and then he may recover the amount under S. 44 from the person who was bound to bear the expense of providing the stamp.<sup>2</sup> See also S. 40 N. 5. It is submitted that the former is the correct view.

#### Section 48—NOTE 1

1. ('80) 5 Cal 311 (314) (DB), *Sonaka v. Bhoobunjoy*.
2. ('40) 27 AIR 1940 Lah 315 (317): ILR 1940 Lah 637: 189 Ind Cas 709 (SB), *Mahomed Hussain v. Emperor*.
3. ('37) 24 AIR 1937 Oudh 176 (177): 12 Luck 752: 165 Ind Cas 904 (DB), *Baldeo Prasad v. Ajodhya Prasad*.  
Also see S. 35 Note 18.

#### Section 48 NOTE 2

1. ('40) 27 AIR 1940 Lah 315 (317): ILR (1940) Lah 637: 189 Ind Cas 709 (SB), *Mahomed Husain v. Emperor*.  
[See also ('33) Mad S M p. 48. (Citing B P 1663- R. Mis., 11th November 1908.)]
2. ('08) 30 All 271 (272, 273): 5 All L Jour 262 (DB), *Secretary of State v. Basharatullah*.  
Also see S. 40 Note 5.



The duty and penalty must be considered to be a debt due to the Crown from the person liable to pay the same. Hence they can be recovered under this section even after his death from such portion of his estate as may be found in the hands of his legal representatives.<sup>3</sup> But the obligation is a personal one and does not extend to the heirs or legal representatives of the deceased.<sup>4</sup>

### Provincial Amendments.

#### Section 48A

##### BENGAL

After section 48 of the main Act, the following shall be *inserted*, namely—

“48A. Notwithstanding anything contained in this Act, no certificate or endorsement under this Act in respect of an instrument chargeable in Bengal with a higher rate of duty under the Bengal Stamp (Amendment) Act, 1922, or the Indian Stamp (Bengal Amendment) Act, 1935, shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument or in respect of the chargeability of such instrument with duty, unless the duty chargeable under the Bengal Stamp (Amendment) Act, 1922, or the Indian Stamp (Bengal Amendment) Act, 1935, has been paid on such instrument.”

—*Beng. Acts III of 1922, S. 11 [1-4-1922] and XII of 1935, S. 5. [1-6-1935]*

##### BIHAR

Same as that of Bengal, except, for the word “Bengal” *substitute* the word “Bihar” and for the short titles of the Bengal Acts *substitute* the short title “the Bihar Stamp (Amendment) Act, 1937.”—*Bihar Act VI of 1937, S. 11. [1-1-1938.]*

##### CENTRAL PROVINCES

Same as that of Bengal, except, for the word “Bengal” *substitute* the words “the Central Provinces and Berar” and for the short titles of the Bengal Acts *substitute* the words and figures “this Act, as amended by the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939.”—*C. P. Act VI of 1939, S. 10. [1-7-1939.]*

##### ORISSA

Same as that of Bengal, except, for the word “Bengal” *substitute* the words “the Province of Orissa” and for the short titles of the Bengal Acts *substitute* the short title “the Orissa Stamp (Amendment) Act, 1943.”—*Orissa Act VI of 1943, S. 11. [26-4-1943.]*

##### UNITED PROVINCES

Same as that of Bengal, except the following :

- (i) for the word “Bengal” *substitute* the words “the United Provinces;”
- (ii) for the short titles of the Bengal Acts *substitute* the short title “the United provinces Stamp (Amendment) Act, 1948 ”; and
- (iii) for the words “or in respect of the chargeability of such instrument with duty, unless the duty chargeable under” *substitute* the words “unless the duty chargeable at the rates provided in.”

—*U. P. Act III of 1936, S. 10. [1-5-1936]. and U. P. Act XVII of 1948, S. 6 [1-4-1948.]*

3. ('40) 27 AIR 1940 Lah 315 (318) : ILR (1940) Lah 637 : 189 I. C. 709 (SB), *Mahomed Hussain v. Emperor.*

4. ('31) Beng S M, Vol. I page 43. (Citing, Board's Collection 1 ; file 150 of 1904.) ('40) Bihar S M, page 128. (Do.)



## GENERAL

The following extract from the Punjab Stamp Manual (1934 Edn., Part I.B, Ch. III, para. 35), summarises briefly the provisions of this Chapter.

“Provision is made in this chapter for refund or renewal of stamps

- (1) when an *impressed stamp* has been *spoiled* (section 49),
- (2) when a stamp has been inadvertently *misused* (section 52),
- (3) when any person is possessed of a stamp which he *does not require for use* (section 54).

Under S. 49, refund or renewal can be granted only when the stamped paper alleged to be spoiled falls clearly within one of the several clauses of the section and application is made within the time prescribed in section 50.

In section 49

Clause (a) provides for the case of a stamp inadvertently spoiled before any instrument has been executed on it ;

clause (b) provides for the case of the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto ;

clause (c) provides for the cases of spoiled stamps used for certain bills of exchange or promissory notes ;

clause (d) provides for any other spoiled impressed stamp on which an instrument has been duly executed.

Section 53 lays down the mode of making allowances for *spoiled or misused stamps*.

Section 54 allows a cash refund within six months of purchase on certain conditions in the case of stamps not required for immediate use and which have not been spoiled or rendered unfit for use. A deduction of one anna in the rupee is made.

Section 55 allows a refund upon the renewal of certain debentures of the value of the stamp on the original or on the new debenture, whichever is less, but no other deduction is made. The original debenture must be produced and cancelled by the Collector. Section 51 authorises the Collector (where authorised) to make refunds in the case of stamped printed forms no longer required by banks, etc. Here too, no deduction is made.”

#### ALLOWANCES FOR STAMPS IN CERTAIN CASES.

\*49. Subject to such rules as may be made by <sup>a</sup>[the collecting Government] as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely :—

- (a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person :

\* [1879—S. 51; 1869—Ss. 45, 46 ; 1862—S. 50 (1), (2) ; 1860—S. 32 (1), (2).]



(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto :

(c) in the case of bills of exchange <sup>b</sup>[payable otherwise than on demand] <sup>c</sup>[\* \* \*] or promissory notes—

(1) the stamp on <sup>d</sup>[any such bill of exchange] <sup>e</sup>[\* \*] signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance : provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange <sup>e</sup>[\* \* \*] to be afterwards written thereon :

(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands :

(3) the stamp used or intended to be used for <sup>d</sup>[any such bill of exchange] <sup>f</sup>[\* \*] or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange <sup>e</sup>[\* \*] may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee: provided that another completed and duly stamped bill of exchange, <sup>f</sup>[\* \*] or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, <sup>f</sup>[\* \*] or note :

(d) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found to be absolutely void in law from the beginning :

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended :

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed :

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended :

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose :

(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value:



- (7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value :
- (8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

*Explanation.*—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.

- a. Substituted for the words "the Local Government," by A. O.
- b. Inserted by S. 5, Indian Finance Act, 1927 (V of 1927).
- c. The word "cheques" was omitted, *ibid.*
- d. Substituted for the words "any bill of exchange," *ibid.*
- e. Words "or cheque" were omitted, *ibid.*
- f. Word "cheque" was omitted, *ibid.*

### Notification.

All functions of the Central Government under, or in relation to, S. 49 have been entrusted to the Provincial Governments.—*See Government of India, Finance Department (Central Revenues) Notification No. 9, dated 13-11-1937.*

### SYNOPSIS

- |   |   |
|---|---|
| 1a. "May."                              | 7. Clause (c).  |
| 1. Impressed stamps.                    | 8. Clause (d)—Sub-clauses whether mutually destructive. |
| 2. Enquiry by Collector.                | 9. Clause (d) (6).                                      |
| 3. Who can apply under this section.    | 9a. Clause (d) (7).                                     |
| 4. Application to District Collector.   | 10. Registered instruments.                             |
| 5. Application, when may be struck off. | 11. Explanation.  |
| 6. Clause (a).                          | 12. Disposal of spoiled stamps on refund.               |

1a. "May."—The word "may" in the context of this section does not seem to be used in the sense of conferring a *discretion* on the Collector. The section confers a *power* on the Collector and the exercise of the power depends not upon the discretion of the Collector but upon the particular facts calling for such exercise.<sup>1</sup> See also Note 9a on Preamble.

1. **Impressed stamps.**—The provision as to allowance for spoiled stamps under this section is restricted to *impressed* stamps, and does not apply to *adhesive* stamps.<sup>1</sup> Under the explanation a certificate of the Collector under S. 32 that the full duty

#### Section 49—NOTE 1a

1. See (1851) 138 E R 672 (680) : 21 L J C P 27 : 87 R R 769 : 6 Ex 337 : 18 L T (OS) 139, *Macdougall v. Paterson*. (Case relating to the word "May" in S. 13 of Act 13 & 14 vict. c. 61 (2).)

#### Section 49 NOTE 1

1. ('33) Mad S M, page 50. (Citing, G. O. 1390, R. D., 28th June 1879.)
- ('34) Punjab S M, Part I-B, Ch. 3 para 36 page 16. (Term "impressed stamps" includes impressed labels as well as sheets (S. 2 (13).)



with which an instrument is chargeable, has been paid, is an impressed stamp for the purposes of this section.<sup>2</sup>

**2. Enquiry by Collector.**—The Collector to whom the application for refund is made may require the person claiming a refund to put in an affidavit or make an oral deposition or the Collector may call for evidence of witnesses in support of the claim.<sup>1</sup> See the Indian Stamp Rules, 1925, R. 19. The inquiry to be made and the powers to be exercised under this section must be made and exercised by the Collector himself and he cannot delegate his authority to any other officer.<sup>2</sup>

In the proceedings before the Collector the party may be represented by a pleader and the refund can be granted in the name of the pleader.<sup>3</sup>

The Collector making an inquiry under this section is not a Court within the meaning of S. 195 of the Criminal Procedure Code.<sup>4</sup>

**3. Who can apply under this section.**—It has been held in the undermentioned case<sup>1</sup> that this section does not restrict the right to apply for refund to a purchaser of the stamp and a person other than the purchaser of the stamp can apply for a refund under this section. It is submitted that the observations in this case are too general and the actual decision on the facts of the case was that where B purchases a stamp with the money advanced by A, A has a right to apply for a refund though he may not be the purchaser noted on the stamp. It is obvious that in such a case the stamp really belongs to A and as owner of the stamp he can apply for a refund in case the stamp is spoiled.

**4. Application to District Collector.**—In Madras, refunds of the value of non-judicial stamps may be made by any officer appointed to exercise the powers of a Collector in this behalf except in respect of stamps purchased outside a district in which case application should be made to the District Collector.<sup>1</sup>

**5. Application, when may be struck off.**—If the Collector calls for evidence and if the applicant does not adduce the evidence called for by the Collector within one year of the order or when the allowance has been ordered, the applicant does not withdraw the amount within one year of the date of the order, the application for refund may be struck off.<sup>1</sup> (See the Indian Stamp Rules, 1925, Rule 20.)

**6. Clause (a).**—Where the stamp purchased for a sale certificate was inadvertently punched by an officer of the Court, but the sale certificate was drawn

2. ('34) Punjab S M, Part I-B, Ch. 3, para 2 (IX) page 3.

Section 49 NOTE 2

1. ('33) Mad S M, page 50. (Citing, B. P. 1996, 9th July 1879.)

2. ('83) 5 All 17 (21):1882 All W N 161 (DB), *Empress of India v. Niaz Ali*.

3. ('33) Mad S M, page 52. (Citing, B. P. 1573-R., Mis., 16th November 1909—A separate power-of-attorney is not necessary to enable the pleader to draw the money from the treasury.)

[See also ('33) Mad S M page 50. (Citing, B. Ps. 1996, 9th July 1879; 1876, Mis. 3rd Oct. 1905—If the actual owner of spoilt stamps puts in an affidavit, no power-of attorney need be required from the

gumasta producing it and claiming a refund. When an affidavit by the actual owner is not put in, a power-of-attorney should be required.)]

4. ('69) 3 Beng L R (App.) (Cr) 6 (8): 11 Suth W R (Cr) 48 (DB), *Queen v. Gour Mohun Sein*.

Section 49 NOTE 3

1. ('29) AIR 1929 Lah 332 (333): 116 Ind Cas 713, *Abdul Rahman v. Rahim Buksh*.

Section 49 NOTE 4

1. ('33) Mad S M, page 51. (Citing, G. O. Ms. 1736, Revenue, 10th August 1936.)

Section 49 NOTE 5

1. ('33) Mad S M, page 51. (Citing, Government of India Notification No. C. Stamps/ 25 FD (CR), 5th May 1925, Rule 20.)



up on it, it was held the stamp cannot be held to have been rendered unfit for use.<sup>1</sup>

It was held in the undermentioned case<sup>2</sup> that this clause applies only to cases of accidental spoiling of the paper of which the stamp is made and does not cover cases in which a person has used the paper in the ordinary way but has made a mistake in using it. This decision was under S. 51 of Act I of 1879 in which the words "or by error in writing" were not there. Under the present section such a case would be covered by this clause.

Where a bill of exchange is rendered unfit for use due to a clerical error in filling it up, a refund for the spoiled stamps can be granted under this clause.<sup>3</sup>

**7. Clause (c).—**Refund for the value of stamps affixed to bills of exchange which have been used as cover and sent to home firms or home partners or directors who are payees is not to be granted.<sup>1</sup>

A certain firm drew a bill of exchange in a set of three bills in their own favour upon another firm and blank endorsed them as payees. Then they discovered an error in the bills and drew a fresh set of bills in lieu of the spoiled set. It was held that as the spoiled bills of exchange did not leave the drawer, the value of the spoiled stamps may be refunded.<sup>2</sup>

**8. Clause (d)—Sub-clauses whether mutually destructive.**—The various sub-clauses in this clause are intended each to allow and provide for refund in the cases to which each sub-clause applies and their effect is not mutually destructive.<sup>1</sup>

**9. Clause (d) (6).**—The words "between the same parties" did not occur in S. 51 (d) (6) of Act I of 1879 corresponding to this clause. It was therefore held that where A executes a mortgage in favour of B but the transaction falls through by reason of the refusal of B to advance the amount and then A executes a mortgage of the same lands in favour of C, A would be entitled to get a refund in respect of the mortgage executed in favour of B under this clause.<sup>1</sup> It is submitted that under the present section such a case would be governed by S. 49 (d) (5) and not by sub-clause (6) of clause (d).

Where a sale-deed was executed in favour of A, but A died before the registration of the document and a second sale-deed on the stamp of the same value was executed in favour of A's widow, it was held that the second document may be considered to have been executed between the same parties and a refund could be granted under this sub-clause.<sup>2</sup>

Refunds under this sub-clause are allowable independently of the refund rules in and under the Act itself in the case of stamps rendered useless solely in consequence of change of law or rule.<sup>3</sup>

#### Section 49 NOTE 6

1. ('95) 18 Mad 235 (236) (SB), *Reference under Stamp Act, S. 46.*
2. ('95) 18 Mad 122 (124) (DB), *Narasimha Charyulu v. Appa Rau.*
3. ('33) Mad S M, page 51. (Citing, B. P. 354, 7th September 1896.)

#### Section 49 NOTE 7

1. ('33) Mad S M, page 51. (Citing, B. P. 591, 24th August, 1889.)
- ('34) Punjab S M, Part I-B, Ch. 3, para 36, page 16. (Govt. of India Resolution No. 2696, dated 7-6-1889.)

2. ('33) Mad S M, page 50. (Citing, B. P. 137, 16th January 1884.)

#### Section 49 NOTE 8

1. ('33) Mad S M, page 52. (Citing, G. O. 947, Revenue, 29th September 1905.)

#### Section 49 NOTE 9

1. ('93) 16 Mad 459 (461) : 2 Mad L Jour 181 (SB), *Reference under Stamp Act, S. 46.*
2. ('33) Mad S M, page 52. (Citing, B. P. 1762-R., Mis. 22nd December 1909.)
3. ('34) Punjab Stamp Manual, Part I-B, Ch. 3, para 36, page 16.



**9a. Clause (d) (7).**—Sub-clause (7) of cl. (d) of S. 49 makes it clear that a person who throws aside an insufficiently stamped deed, and gets a new deed in the same terms drawn up and properly stamped, is entitled to get a refund made to him of the duty which he first of all paid upon the insufficiently stamped and superseded deed.<sup>1</sup>

**10. Registered instruments.**—It has been held by the Board of Revenue, Madras, that refund should not be granted under this section of the value of stamps on a registered instrument unless a fresh instrument is registered between the same parties relating to the same properties, subject to the same terms and conditions as the original document.<sup>1</sup> It is submitted that the decision would be applicable to cases coming under S. 49 (d), sub-cl. (6), (7) and (8) only.

**11. Explanation.**—The explanation is new. It did not occur in the previous Stamp Act, I of 1879. But even under that Act it was held in the undermentioned case<sup>1</sup> that allowance for spoiled impressed stamps could be given when the instrument had been endorsed by the Collector under S. 31 of that Act (corresponding to S. 32 of the present Act.)

**12. Disposal of spoiled stamps on refund.**—When a refund has been sanctioned, the stamps should be punched to prevent their being again sold or used to support a claim for refund<sup>1</sup>.

Application for relief under section 49 when to be made.      \*50. The application for relief under section 49 shall be made within the following periods, that is to say,—

(1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument :

(2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled :

(3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed :

\*[1879—S. 51, Provisos.]

Section 49 NOTE 9a

1. ('34) Punjab S M, Part I-B, Ch. 3, para. 36, page 16.

Section 49 NOTE 10

1. ('33) Mad S M, page 52. (Citing, B P Mis. No. 845, dated 27th March 1940.) [See also ('34) Punjab S M, Part I-B, Ch. 3, para. 36, p. 16. (Registration does not *ipso facto* affect the right to refund the value of a stamp of a document which has

been registered, and when refund is made in such a case, the registration office should be informed.)]

Section 49 NOTE 11

1. ('88) 11 Mad 37 (38) (SB), *Reference under Stamp Act, S. 46.*

Section 49 NOTE 12

1. ('33) Mad S M, page 51. (Citing, B P 103, 2nd February 1888.)



Provided that,—

- (a) when the spoiled instrument has been for sufficient reasons sent out of <sup>a</sup>[the Provinces], the application may be made within six months after it has been received back in <sup>a</sup>[the Provinces] :
- (b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

a. Substituted for "British India" by I. O.

1. **Scope.**—This section prescribes the period of limitation for application for relief under S. 49. A period of two months is prescribed in cases mentioned in cl. (d) (5) of that section and a period of six months is prescribed in other cases.

2. **Extension of the period of limitation.**—Instances occurred in which the period of limitation prescribed by this section operated as a serious handicap. The Government of India, therefore, in cases of serious hardship, entertained applications for relief under S. 49 even after the expiry of the period prescribed by this section. By Government of India Resolution No. 125 (Finance Department), dated the 14th January 1881, this power was delegated to Local Governments and the applications had to be made within a year of the date of purchase of the stamps.

This limit of one year was subsequently removed and the Provincial Governments were authorised to delegate power for sanctioning refunds and renewals where holders of the stamps were unavoidably prevented from applying for relief within the prescribed period. This discretion should, however, be very sparingly exercised and such allegations as ignorance of law with regard to limitation should not be allowed to constitute a special case.<sup>1</sup> (For fuller information see Appendix E.)

51. **The Chief Controlling Revenue-authority** <sup>a</sup> [or the Collector if empowered by the Chief Controlling Revenue-authority in this behalf] may, without limit of time, make allowance for stamped papers used for printed forms of instruments <sup>b</sup> [by any banker or] by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said <sup>b</sup> [banker,] company or body corporate, provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

a. Inserted by part I of the Schedule to the Decentralization Act, 1914 (IV of 1914).

b. Inserted by S. 6 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

#### Notification.

#### BIHAR

The Board has delegated its power under S. 51 to all Collectors of Districts (including Deputy Commissioners).—See Board's notification No. 26-9-4, dated 30-7-1915, published in *Bihar and Orissa Gazette* of 6-8-1915, Pt. II, p. 1044.

#### Section 50—NOTE 2

1. ('34) Punjab S M, Part I-B, Ch. 3, p. 17.



## RELEVANT REFERENCE TO OTHER ACT.

N. W. F. P.

The reference to the Chief Controlling Revenue-authority is to be construed as referring to the Revenue Commissioner.—See S. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901).

**1. Scope and object of the section.**—This section is new and gives power to the Chief Controlling Revenue-authority to make allowances for stamp paper for printed forms used by incorporated companies where such forms have ceased to be required.<sup>1</sup> The object of enacting this section was thus stated by the Hon'ble Sir James Westland when introducing the Bill 1897 :

“In S. 51 we have inserted a provision which shall give certain *facilities to companies* which in the course of their business keep a considerable number of stamped forms for use. Cases have occasionally arisen in which these forms have ceased to be useful for the purposes for which they were prepared. There are no provisions in the existing law by which a refund of the duty paid on such forms can be claimed ; although claims made in such cases have been considered by Government, and refunds made by executive order. We have thought it better to provide greater facilities in this respect and have empowered the Chief Revenue-authority to give refunds in these cases.”

The section is of particular value when companies are wound up, and skeleton and other stamped forms become useless.<sup>2</sup> According to a Government order in Madras, the allowance in the case of printed forms provided by this section should also be made in the case of typewritten forms of instruments.<sup>3</sup>

**2. “Or the Collector if empowered..in this behalf.”**—The power to make allowance under this section has been delegated to Collectors in Bengal,<sup>1</sup> Bihar,<sup>2</sup> Madras<sup>3</sup>, and the Punjab.<sup>4</sup>

**3. Allowance when to be made.**—Unlike Ss. 45 and 50 which prescribe a time limit for making an application for refund, this section does not provide for any period of limitation for an application for refund under this section.

**4. Deduction in making allowance.**—In Madras in making allowances for stamps under this section, a deduction of one anna in the rupee or fraction thereof is made.<sup>1</sup> But no deduction is required in the Punjab.<sup>2</sup>

## Section 51—NOTE 1

1. See the Statement of Objects and Reasons of the Bill of 1897.
2. ('34) Punjab S M, Part I-B, Ch 3, p. 17.
3. ('33) Mad S M, page 53. (Citing G O Ms. 1670, Rev. 24th July 1935; B P 427, Mis. 27th July 1935.)

## Section 51 NOTE 2

1. ('31) Beng S M, Vol. I, page 47.

2. ('40) Bihar S M, page 132.

3. ('33) Mad S M, page 53. (Citing B P 147/854 R. Mis. 3rd August 1914.)

4. ('34) Punjab S M, Part I-B, Ch. 3, page 17.

## Section 51 NOTE 4

1. ('33) Mad S M, page 53. (Citing, B P 118, Mis., 28th May 1931 and G O Ms. No. 2584, Rev. D. 10-12-1927 in B P R No. 364 Mis. Dated 14-12-1927).

2. ('34) Punjab S M, Part I-B, Ch. 3, page 17.



\*52. (a) When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty ; or

(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13 ;

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

1. **Scope of the section.**—This section authorises the Collector to cancel and allow as spoiled a stamp inadvertently misused or rendered useless in the following cases :—

- (1) When a stamp of a description other than that prescribed for an instrument is used ;
- (2) when a stamp of greater value than was necessary is used ;
- (3) when a stamp is used for an instrument not chargeable with duty ; and
- (4) when a stamp is rendered useless under S. 15, by the instrument being written in contravention of the provisions of S. 13.

In every case the Collector must satisfy himself that the misuse was *inadvertent*.<sup>1</sup>

The person seeking the benefit of this section must make an application to the Collector within six months after the date of the instrument, or, if it is not dated within six months after its execution. He must also get the instrument re-stamped with the proper duty.

The section applies to *all* kinds of stamps, whether impressed or adhesive, used under the Act, but great caution is necessary in refunding the value of adhesive stamps.<sup>2</sup>

2. **“Stamp of a description other than that prescribed for such instrument.”**—In *Rafiuddin v. Latif Ahmed*<sup>1</sup> the High Court of Calcutta has held, following the undermentioned Special Bench case<sup>2</sup> of the High Court of Allahabad, that the expression “stamp of a description other than that prescribed for such instrument” evidently refers to a *non-judicial stamp*, either adhesive or impressed, which is mentioned in the Act, and does not cover a case in which a *court-fee stamp* has been erroneously used where a non-judicial stamp ought to have been used. It was

\*[1879—S. 52.]

Section 52—NOTE 1

1. ('34) Punjab S M, Part I-B Ch 3 page 17.
2. ('33) Mad S M, page 53. (Citing, endorsement of the Government of India No. 911, dated 6th June 1879).
- ('40) Bihar S M, page 226.

('34) Punjab S M, Part I-B Ch. 3, page 17.  
Section 52 NOTE 2

1. ('10) 7 Ind Cas 94 (96) (DB) (Cal.)  
Also see S. 37 Note 3.
2. ('01) 23 All 213 (215, 216) : 1901 All WN 54 (SB), *Reference under Stamp Act, S. 57.*



further observed that the Revenue Authorities may, however, grant relief in such a case, though it may be granted only as a matter of indulgence and not as a matter of right. The Allahabad case arose upon the construction of S. 37 of the Act. But the same principle was held to be applicable to the construction of this section also. It is to be noted that the Calcutta case was decided long before the decision of their Lordships of the Privy Council in *Ma Pwa May v. Chettiar Firm*,<sup>3</sup> which overruled the abovementioned case of the Allahabad High Court so far as it concerned court-fee stamps in their present form. The view of the Calcutta High Court is not, therefore, good law now.

**3. Stamps used for instrument not chargeable with duty.**—A barrister was enrolled as an attorney of the High Court and paid the requisite stamp duty of Rs. 250. He was subsequently enrolled as an advocate of the same High Court, and paid a stamp duty of Rs. 500. He then made an application for refund of Rs. 500 by virtue of the exemption to Art. 30. It was held that the stamp duty should be refunded under this section.<sup>1</sup>

Allowance for spoiled or misused stamps how to be made.

**\*53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—**

- (a) other stamps of the same description and value ; or,
- (b) if required and he thinks fit, stamps of any other description to the same amount in value ; or,
- (c) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

**1. Scope of the section.**—Sections 49 to 52 contain provisions regarding the allowance to be made for spoiled and misused stamps in certain cases. This section provides for the return to be made in exchange for the spoiled or misused stamps when allowance is made for such stamps under the foregoing sections. The return is to be made in the form of stamps or money. Under cl. (a) of the section the Collector can give, in lieu of the spoiled or misused stamps, other stamps of the same description and value. If the person to whom allowance is made requires stamps of any other description than the spoiled or misused stamps, then under cl. (b) the Collector can give such stamps of the same amount in value as the spoiled or misused stamps *only if he thinks fit*. If the person does not want any stamp in return but wants its money value then under cl. (c) the Collector has a discretion to make the return in money value and has to deduct one anna for each rupee or fraction of a rupee. The clauses are enacted to meet the requirements of each individual case. Thus, a private person is prohibited from selling a stamp other than a one anna or half an anna adhesive stamp under S. 69 of the Act. If a person not in need of any stamp for immediate use is given another stamp under cl. (a), the stamp will remain idle with him as he cannot sell it. Clause (c), under which money value can be given, satisfies the requirements of such a case.

\* [1879—S.53 ; 1869—S. 45; 1862—S. 50 (3).]

3. ('29) 16 AIR 1929 PC 279 (282) : 56 Ind App 379 : 7 Rang 624 : 120 Ind Cas 645 (PC).

Section 52 NOTE 3

1. ('09) 36 Cal 645 (646) : 2 Ind Cas 843 (SB), *In re R. A. Baxter*.



The provisions of the section have reference to non-judicial stamps only. Under cl. (b), therefore, court-fee stamps cannot be granted in exchange for non-judicial stamps.<sup>1</sup>

As will be seen from the provisions in the clauses no deduction is to be made when *stamps* are given in exchange for the spoiled or misused stamps. The deduction is to be made only when money value is given under cl. (c).<sup>2</sup> In Madras, the deduction is made on the aggregate value of the stamps produced and not with reference to the value of each stamp.<sup>3</sup> In the Punjab, the deduction is calculated on the value of each stamp and not on the aggregate, but when two or more impressed sheets or labels are used to denote the stamp duty on a single instrument in accordance with the Stamp Rules they are treated, for the purpose of calculating the deduction, as a single stamp. So also when a bill of exchange or promissory note is drawn in a set the stamps on all the parts of the set are treated as a single stamp provided all the sets are surrendered for cancellation.<sup>4</sup> In the Central Provinces, the deduction is calculated on the total value of the stamps only if a stamp vendor supplies two or more stamps when a single stamp of the required value is not in stock.<sup>5</sup>

In Madras, stamp vendors are prohibited from altering endorsements made by them on stamped papers. If an incorrect endorsement has been inadvertently made, the stamped paper can be treated as spoiled under S. 49 of the Act and allowance can be claimed under this section.<sup>6</sup>

**\*54.** When any person is possessed of a stamp or stamps which have not been Allowance for spoiled or rendered unfit or useless for the purpose intended, but stamps not required for which he has no immediate use, the Collector shall repay to for use. such person the value of such stamp or stamps in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

- (a) that such stamp or stamps were purchased by such person with a *bona fide* intention to use them ; and
- (b) that he has paid the full price thereof ; and
- (c) that they were so purchased within the period of six months next preceding the date on which they were so delivered :

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

\*[1879—S. 54 ; 1869—S. 45.]

#### Section 53—NOTE 1

1. ('33) Mad S M, page 53. (Citing, B. Ps. 580, 28th April 1880 ; 599, 25th March 1887.)

('34) Punjab S M, Part I-B Ch 3 page 17.

2. ('34) Punjab S M, Part I-B Ch 3 p. 18. (Where the allowance is made by means of fresh stamps no deduction should be made.)

('33) Mad S M, page 53. (Citing, B. Ps. 1346, 12th July 1881 ; 1328, 19th April 1884—In

this section the words relating to deduction can grammatically refer only to clause (c) which deals with refund in money.)

3. ('33) Mad S M, page 53. (Citing, B. Ps. 3124, 15th December 1882.)

4. ('34) Punjab S M, Part I-B Ch 3 page 17

5. ('42) C P S M, page 120.

6. ('33) Mad S M, page 54. (Citing, B. P. 99, 1st February 1888.)



SYNOPSIS

1. Scope and applicability of the section. months ago.
2. Deduction.
3. Use of stamp purchased more than six months ago.
4. Proviso.

1. **Scope and applicability of the section.**—This section authorizes the Collector to repay the value of a stamp or stamps which are *not* spoiled or rendered unfit or useless, but which are of no immediate use to the person who possesses them.

In order to claim repayment such person should deliver up the stamps to the Collector and prove to his satisfaction—

- (1) that the stamps were purchased with a *bona fide* intention to use them ;
- (2) that he has paid the full price thereof ; and
- (3) that they were purchased within six months of the delivery.

The Collector also should before passing orders of repayment, examine very carefully the original endorsement of sale to see if it has been in any way changed or effaced and also satisfy himself that the applicant is the *bona fide* purchaser of the stamp in question or is duly authorized by him to apply for the refund.<sup>1</sup>

If the above requirements are satisfied the refund of the value of the stamp must be made. Thus where a stamp-vendor sold a two rupee stamp and an eight annas stamp, certifying that he had no single stamp of the value of Rs. 2-8-0, and the purchaser, who used the two rupee stamp for another transaction, applied for refund of the value of the eight annas stamp, it was ruled by the Madras Board of Revenue that the refund could be made if the requirements of the section were satisfied.<sup>2</sup>

The section applies to all kinds of stamps used under the Act, but great caution should be used in refunding the value of adhesive stamps.<sup>3</sup>

The section permits a refund in money only. Hence, exchange of judicial for unused non-judicial stamps is contrary to law.<sup>4</sup>

2. **Deduction.**—The section requires that in making the repayment for the value of stamps the Collector should deduct one anna for each rupee or portion of a rupee. When more stamps than one are presented for refund, the deduction of one anna in the rupee should be made on the aggregate value of the stamps and not on each stamp.<sup>1</sup> (See also Note 1 on S. 53.)

3. **Use of stamp purchased more than six months ago.**—All that this section says is that a person after six months of his purchase of the stamps cannot get his money back by presenting them to the Collector. It does not say that if he has bought them more than six months ago they cannot be used. The use of such

Section 54—NOTE 1

1. ('40) Bihar S M, page 134. (Citing Bihar and Orissa Board's file No. 26-4 of 1914.)
2. ('33) Mad S M, page 54. (Citing, B. P. 5, 7th January 1892 ; 2441 R. Mis., 23rd October 1902.)
3. ('40) Bihar S M, page 226. ('33) Mad S M, page 33. ('34) Punjab S M, Part I-B Ch 3 page 18.
4. ('33) Mad S M, page 54. (Citing, B. P. 225, 7th February 1887.)

Section 54 NOTE 2

1. ('40) Bihar S M, pp. 133-134. (Citing,

Board's Circular Order No. 6 of September 1897.)

('31) Beng S M, Vol. I page 48. (Citing, Board's Circular Order No. 6 of September, 1897.)

('42) C P S M, page 120. (Where a stamp-vendor has supplied two or more stamps, because a single stamp of the value required was not in stock, if the purchaser subsequently applies for a refund and it is granted, the deduction of one anna in the rupee prescribed by S. 53 or S. 54 shall be calculated on the total value of the stamps and not on the value of each stamp separately.)



stamps is therefore valid, though he cannot get back his money under this section.<sup>1</sup>

4. **Proviso.**—The proviso was newly added to this section in the present Act to make special provision for the case of licensed vendors of stamps.<sup>1</sup>

In the case of a stamp-vendor the repayment is of the sum *actually paid* by him and not of the full price of the stamp. Further, the deduction of one anna in the rupee is in the discretion of the Collector and not obligatory.

On the question as to when deduction should be made, it has been ruled by the Punjab Government that when stamps are returned into the Collector's store on—

- (1) resignation of the vendor's licence ;
- (2) revocation of licence for any fault of the licensee ;
- (3) death of the vendor ;
- (4) application of the vendor for leave to restore any stamps ;

the stamps should be taken back at their full value less a deduction of one anna in the rupee ; but that when they are returned on—

- (a) expiration of licence ;
- (b) recall of stamps by Government ;

(c) revocation of licence for any other cause than that mentioned in (2) ; they should be taken back at their full value less only any discount allowed on their sale to the licensed vendor.<sup>2</sup>

**55. When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month, repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less :**

**Provided that the original debenture is produced before the Collector and cancelled by him in such manner as the a[Provincial Government] may direct.**

**Exemption**—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes :—

- (a) the issue of two or more debentures in place of one original debenture, the total amount secured being the same ;
- (b) the issue of one debenture in place of two or more original debentures, the total amount secured being the same ;
- (c) the substitution of the name of the holder at the time of renewal for the name of the original holder ; and
- (d) the alteration of the rate of interest or the dates of payment thereof.

a. Substituted for the words "Governor-General in Council" by A. O.

Section 54 NOTE 3

1. ('43) 30 AIR 1943 Oudh 314 (314) : 206  
Ind Cas 353, *Gajadar Lal Agarwal v. U. P. Government*.

Section 54 NOTE 4

1. See the Statement of Objects and Reasons of the Bill of 1897.  
2. ('34) Punjab S M, Part I. B Ch 3 page 18.



1. **Object of the section.**—This section is new and is intended to give facilities to companies in respect of renewals of debentures. Before the insertion of this section in the Act of 1899 a company which wanted to renew debentures had to pay the same duty upon them as upon the originally issued debentures. This section provides for the refund of stamp duty in the case of renewed debentures even if certain alterations are made in the old debentures.

2. **Mode of cancellation—Proviso.**—Rule 21 of the Stamp Rules, 1925, provides that when the Collector makes a refund under this section, he shall cancel the original debenture by writing on or across it the word "Cancelled" and his usual signature with the date thereof.

## CHAPTER VI.

### REFERENCE AND REVISION.

\*56. (1) The powers exercisable by a Collector under Chapter IV and Chapter V <sup>a</sup>[and under clause (a) of the first proviso to section 26] shall in all cases be subject to the control of the Chief Controlling Revenue-authority.

Control of, and statement of case to, Chief Controlling Revenue authority.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

a. Inserted by S. 7 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

### RELEVANT REFERENCE TO OTHER ACT.

N.-W. F. P.

The reference to the Chief Controlling Revenue-authority is to be construed as referring to the Revenue Commissioner.—See S. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901).

### SYNOPSIS

1. Sub-section (1).
2. Sub-section (2).
3. "Any instrument."
4. "Chief Controlling Revenue-authority."

1. **Sub-section (1).**—This sub-section is new. The Act of 1879 contained no similar provision. Under S. 40 of the Act of 1869, *all* certificates and orders of the Collector were open to revision on appeal or otherwise by the Chief Controlling Revenue-authority.<sup>1</sup>

Under this sub-section, *only* the powers exercisable by a Collector under Chaps. IV and V and under cl. (a) of first proviso to S. 26 are subject to the control of the Chief Controlling Revenue-authority.

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\*[1879—S. 45 ; 1869—S. 40 ; 1862—Ss. 15 (5), 35 ; 1860—S. 13 (3). ]

### Section 56—NOTE 1

1. See (81) 3 All 115 (117) (DB), *Girdharidas v. Jagan Nath*.



Section 31 is in Chap. III and the adjudication by the Collector under powers conferred by that section is final and is not subject to the control of the Chief Controlling Revenue-authority under S. 56 (1)<sup>1a</sup>. If, however, a party has not paid the stamp duty and the Collector after impounding the document commences a case under S. 40 the Board of Revenue would be able to intervene in such a proceeding if it intervened before it was completed.<sup>2</sup>

Here a question that arises is *when* are the Collector's powers to be controlled by the Chief Controlling Revenue-authority, whether before they have been actually exercised or even after that. In *Reference under Stamp Act, S. 57*<sup>3</sup> a Sub-Registrar acting under S. 33 impounded certain documents which had been produced before him for registration and under S. 38 (2) forwarded them to the Collector who under S. 40 (1) (a) certified that they were exempt from stamp duty. The Inspector General of Registration disagreed with the opinion of the Collector and reported the matter to the Board of Revenue for orders. The Board of Revenue referred the question as to the stamp duty if any payable on the documents to the High Court under S. 57. It was held by the majority that as the Collector had already granted a certificate under S. 40 (1) (a) the Board of Revenue had no authority to revise it under S. 56 (1). Bhashyam Ayyangar, J. observed:

"I think it highly probable that in S. 56 (1) the draftsman advisedly qualified the word "powers" by the adjective "exercisable", with a view to denote the intention of the Legislature that the Collector's powers are to be controlled by the Board of Revenue only before they have been actually executed and a right has thereby accrued to a party."

This view was followed in subsequent cases and it was held that the certificate of the Collector under S. 40 (1) (a) or S. 42 (1) is final and cannot be revised by the Chief Controlling Revenue-authority under S. 56 (1); nor can it be made the subject of a reference under S. 57 as that section applies only when there is a case pending.<sup>4</sup>

Where a document has been impounded and sent to the Collector and the Collector acting under S. 40 (1) (b) has called upon the executant to pay up the deficiency in stamps together with penalty the order can be revised by the Chief Controlling Revenue-authority under S. 56 (1) before the stamp duty so demanded is paid, as the matter must be deemed as pending before the Collector till the certificate of payment of duty and penalty is endorsed on the document under S. 42.<sup>5</sup> Thus,

1a. ('02) 25 Mad 752 (755) (SB), *Reference under Stamp Act, S. 57*.

('02) 25 Mad 751 (752) (SB), *Reference under Stamp Act, S. 57*.

('32) 19 AIR 1932 Cal 736 (737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook & Kelvey*. (Before Collector has impounded the document, the Board of Revenue has no controlling power under S. 56 (1).)

Also see S. 32 Note 2.

[But see ('34) 21 AIR 1934 Cal 803 (804) : 61 Cal 556 : 152 Ind Cas 601 (SB), *In re U. P. Electric Supply Co., Ltd.* (It is a little difficult to extract from the provisions of S. 32 anything which indicates that an adjudication under S. 31 is necessarily, in all cases and for all purposes, final.)]

2. ('32) 19 AIR 1932 Cal 736 (737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook &*

*Kelvey*.

Also see S. 32 Note 2.

3. ('02) 25 Mad 752 (761) (SB).

4. ('18) 5 AIR 1918 All 181 (182) : 40 All 128 : 47 Ind Cas 299 (SB), *In re Khub Chand*.

('26) 13 AIR 1926 Bom 51 (52) : 91 Ind Cas 299, *Usuf Dada Bhai v. Chand Mahomed*.

('35) 22 AIR 1935 Nag 54 (55) : 31 Nag L R 162 : 156 Ind Cas 213, *Kedarnath Raghunath v. Ratiram*.

Also see S. 40 Note 4 and S. 57 Note 3.

5. ('32) 19 AIR 1932 Lah 495 (496) : 13 Lah 745 : 138 Ind Cas 758 (SB), *Thakar Das v. Emperor*.

('36) 23 AIR 1936 Lah 449 (450) : 17 Lah 223 : 162 Ind Cas 774 (SB), *Firm Shams Din v. Collector, Amritsar*.



if a Collector acting under S. 40 (1) (b) requires the payment of stamp duty from a *wrong* person his order is open to revision under section 56 (1)<sup>6</sup>.

An order of a Collector cancelling the licence of a stamp-vendor does not come either under Chap. IV or V and this order cannot be set aside by the Chief Controlling Revenue-authority under S. 56 (1).<sup>7</sup>

See also S. 45 under which the Chief Controlling Revenue-authority can refund penalty or excess duty levied by the Collector under S. 40.

It will be seen that the result of all these provisions is that when a Collector certifies under S. 40 (1) (a) that an instrument is not chargeable with duty or has been duly stamped, his certificate is final. It is only when the Collector seeks to charge duty beyond what a party thinks is the proper amount that the party is given an opportunity to move the higher Revenue-authority.

2. **Sub-section (2).**—A reference under this sub-section is to be made by the Collector *if he feels doubt* as to the amount with which any instrument is chargeable.<sup>1</sup> The making of the reference is in the discretion of the Collector and the public has no right to compel him to refer the question arising in any particular case to the decision of the Chief Controlling Revenue-authority.<sup>2</sup>

No penalty is to be levied by the Collector in a case in which a reference is made to the Board under this sub-section.<sup>3</sup>

3. **"Any instrument."**—Sub-section (2) confers upon the Board of Revenue power to deal with instruments which are already in existence and which have been made the subject of action by the Collector acting under Ss. 31, 40 and 41 and not with instruments which may or may not hereafter come into existence.<sup>1</sup>

4. **"Chief Controlling Revenue-authority."**—For definition see S. 3 (9a) of the General Clauses Act, 1897.

In the Punjab, all applications under S. 56 (1) for revision of orders of Collectors should be made to the Financial Commissioner through the Commissioner of the division (Punjab Government Letter No. 314, dated the 6th January 1933).<sup>1</sup>

6. ('08) 30 All 271 (272) : 5 All L Jour 262, *Secretary of State v. Basharat-ulla*.

7. ('42) 1942 Nag L Jour 544 (545), *Lokman Dhondba v. Baburao Ganpatrao*.

#### Section 56—NOTE 2

1. ('92) 15 All 107 (108) : 1892 All W N 243 (SB), *Jwala Prasad v. Ram Narain*.

('33) Mad S M, page 55. (Citing, B. Ps. 281/2662 R., Mis., 21st November 1903 ; 8-R., Press Mis., 5th November 1930.)

2. ('39) 26 AIR 1939 Bom 215 (217) : I L R (1939) Bom 320 : 182 Ind Cas 835, *Dewar-khand Cement Co., Ltd. v. Secretary of State*.

('35) 22 AIR 1935 Nag 54 (55) : 31 Nag L R 162 : 156 Ind Cas 213, *Kedarmal Raghunath v. Ratiram*.

3. ('31) Beng S M, Vol I, page 49.

#### Section 56—NOTE 3

1. ('15) 2 AIR 1915 All 33 (34) : 37 All 125 : 27 Ind Cas 501 (SB), *In re Stamp Reference*.

#### Section 56—NOTE 4

1. ('34) Pun S M, Part 1-B, Ch. 3, page 19. ('41) 43 Pun L R 294 (295), *Parshotam Das v. Emperor*.



- \*57. (1) The Chief Controlling Revenue-authority may state any case referred to it under section 56, sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon,—

Statment of case by Chief Controlling Revenue-authority to High Court, Chief Court, or Judicial Commissioner's Court.

<sup>a</sup>[(a) if it arises in the Andaman and Nicobar Islands, to the High Court at Calcutta ;

(b) If it arises in Ajmer-Merwara, to the High Court at Allahabad ; and

(c) if it arises in any other Province or part of a Province, to the High Court of that Province or part of the Province.]

(2) Every such case shall be decided by not less than three Judges of the High Court, <sup>b</sup>[Chief Court or Judicial Commissioner's Court] to which it is referred, and in case of difference the opinion of the majority shall prevail.

a. In sub-section (1) clauses (a) to (c) were substituted for clauses (a) to (i) by A. C. A. O. [23-3-1948] old clauses (a) to (i) were as follows:

“(a) if the case arises in the Province of Madras or in Coorg, to the High Court at Madras ;

(b) if it arises in the Province of Bombay, to the High Court at Bombay ;

(c) if it arises in Sind, to the Judicial Commissioner's Court ;

(d) if it arises in Agra or in Ajmer-Merwara, to the High Court, at Allahabad ;

(e) if it arises in Oudh, to the Chief Court ;

(f) if it arises in Bihar or in Orissa, to the High Court at Patna ;

(g) if it arises in the Punjab, the North-West Frontier Province, British Baluchistan, or Delhi, to the High Court at Lahore ;

(h) if it arises in the Central Provinces and Berar, to the High Court at Nagpur; and

(i) if it arises in any other part of British India, to the High Court at Calcutta.”

b. Substituted for the words “or Chief Court” by A. O.

*Provincial Amendment.*—Himachal Pradesh.

In sub-sect. (1) of S. 57, after cl. (h) insert the following clause (h) (a) “If it arises in Himachal Pradesh, to the Judicial Commissioner's Court.”—*Himachal Pradesh (Application of Laws) Order, 1948, [25-12-1948.]*

*Note :—*In sub-section (1) of S. 57 as adopted by A. C. A. O. there is no clause (h). The above amendment should have been inserted after cl. (b) as adopted by A.C.A.O. It appears that the change made in S. 57 (1) has been overlooked while making the amendment.

#### SYNOPSIS

- |   |                                      |
|---|--------------------------------------|
| 1. Scope of the section.                | 3. “Case”—Meaning of.                |
| 2. Chief Controlling Revenue-authority. | 4. “Otherwise coming to its notice.” |
|   | 5. Sub-section (2).                  |

1. **Scope of the section.**—The section invests the Chief Controlling Revenue-authority with a discretionary power to make a reference to the High Court in the following cases, namely—(i) doubtful cases referred to it by the Collector under S. 56 (2) while acting under Ss. 31, 40 or 41 ; and (ii) cases coming to its notice otherwise than on a reference under S. 56 (2). The power of reference under this section is confined to the above cases.

[1879 S. 46; 1869—S. 41 (a), (b); Cf. 1870 33 & 34 Vict., C. 97—S. 19 (1), (2); (1891) 54 & 55 Vict., C. 39—S. 13 (1), (2).]



- (i) At the end of second paragraph ending with the words “an order under S. 45, Specific Relief Act” *add* the following—

“This decision of the Bombay High Court has been affirmed on appeal by the Supreme Court in *Chief Controlling Revenue Authority v. Maharashtra Sugar Mills*.<sup>2b</sup> It was also held by the Supreme Court in the above case that S. 226 of the Government of India Act, 1935 was no bar to the High Court directing the Chief Controlling Revenue Authority to state a case under this section and that the High Court’s order in such a case would not amount to the exercise of original jurisdiction in any matter concerning the revenue but would only amount to asking the Revenue Authority to do its statutory duty. It was further held that the fact that the proceedings in the case had passed beyond the stage of assessment and had reached the stage of enforcing payment was irrelevant because by the relief granted by the High Court no attempt was made to obstruct the Revenue Authority in the discharge of its duties.

The above decision of the Supreme Court must be held to have impliedly overruled the earlier decision of the Madras High Court reported as *In re Shanmuga Mudaliar*,<sup>2c</sup> in which it was held that under this section it was left to the discretion of the Chief Controlling Revenue Authority to refer or not any question as to the stamp duty payable on a document and hence it could not be said that by refusing to refer a case the Revenue Authority has failed to exercise any statutory duty. On the above reasoning, the Madras High Court refused to issue a writ of *mandamus* against the Chief Controlling Revenue Authority to refer a case under this section. The Madras High Court did not refer to the case of the Bombay High Court above referred to which had taken a view contrary to the one it was taking.

Where a reference is made under this section in compliance with an order under S. 45 of the Specific Relief Act, the competency of the reference cannot be questioned on the ground that there had already been an adjudication by a competent authority as to the stamp duty payable on the instrument.<sup>2d</sup>”

- (ii) After point 6 in the same Note, *add* the following —

“The power to make a reference under this section has been conferred upon the Chief Controlling Revenue Authority and not upon any ministerial officer subordinate to it. Such references are not of an administrative character but are judicial in nature and it is only when the Chief Controlling Revenue Authority, after applying a judicial mind to the consideration of the questions before it, requires the opinion of the High Court, that it may make a reference under this section.<sup>6a</sup>”

- (iii) In the same Note, *insert* after foot-note No. 2a —

“2b. (‘50) 37 AIR 1950 S. C. 218 (220) (S C).

2c. (‘51) 38 AIR 1951 Mad 276 (276) : 1950-2 Mad L Jour 399 (DB).

2d. (‘48) ILR (1948) 2 Cal 323 (330) (FB), *Standard Coal Co. Ltd. v. Chief Controlling Revenue Authority, Bengal*. (Stamp duty payable already adjudicated upon by Board of Revenue—Board still referring matter to High Court in compliance with order under S. 45, Specific Relief Act.)”

- (iv) In the same Note, *add* in foot-note No. 6 —

“(‘50) 37 AIR 1950 All 319 (319) (SB), *In the matter of Sonbarsa Kuer*. (Chief Controlling Revenue Authority must state the case and the questions required to be answered and its own opinion thereon.)”

- (v) In the same Note, *add* after foot-note No. 6 —

“6a. (‘50) 37 AIR 1950 All 319 (319) (SB), *In the matter of Sonbarsa Kuer*.”







Though the terms of the section are permissive Boards of Revenue are disposed to understand the intention of the Legislature to have been to secure a judgment of the High Court in doubtful cases only.<sup>1</sup>

In the undermentioned case<sup>2</sup> of the Bombay High Court it was observed that the exercise of powers under the section being discretionary the public has no right to compel the Revenue-authority to make a reference under this section. But in a subsequent decision<sup>2a</sup> of the same High Court these observations have been held to be *obiter* and it has been held that when a serious question of law is involved, there is a duty cast upon the Chief controlling Revenue Authority to state a case under sub-section (1) of this section and the subject has definitely a right to have such a case determined by the High Court. The breach of duty lies in a failure to appreciate that there is a serious question of law involved and it can be enforced by an order under S. 45, Specific Relief Act.

A reference under this section can be made only when there is a case pending before the Chief Controlling Revenue-authority and which is to be disposed of by it in conformity with the judgment of the High Court received under S. 59 (2). The section cannot be used as a means for the obtaining of an opinion from the High Court on questions of a general nature, i.e., an abstract question of chargeability of documents of a certain kind, not arising out of an actual case under any one of Ss. 31, 40 and 41 of the Act.<sup>3</sup>

In the undermentioned case<sup>4</sup> Garth, C. J. of the Calcutta High Court observed as follows :

" . . . . I feel very strongly that, in giving an opinion on questions submitted to us by the Board of Revenue, which may serve in the future as 'guide to the Board imposing' taxes on the public, we are bound to advise upon the *actual facts before us*, and have no right to speculate upon the possible nature of transactions of which we have no certain knowledge."

Where an instrument in respect of which a reference is made under this section is not in existence at the date of reference, the High Court has no jurisdiction to give an opinion on the questions referred.<sup>5</sup> It may, however, be noted here that a Collector acting under S. 31 and feeling doubt as to the stamp duty chargeable in respect of a particular instrument may refer the case to the Chief Controlling Revenue-authority under S. 56 (2) even in the case of an instrument which may not be executed and the latter may in its turn refer the case to the High Court under this section.

The Chief Controlling Revenue-authority who makes a reference under this section is required to express his opinion on the point referred.<sup>6</sup>

#### Section 57—NOTE 1

1. See ('33) Mad S M, page 56.
2. See ('39) 26 AIR 1939 Bom 215 (217) : I L R (1939) Bom 320 : 182 Ind Cas 835, *Dewarkhand Cement Co. Ltd. v. Secretary of State*.
- 2a. ('48) 35 AIR 1948 Bom 254 (259, 260, 261) (DB), CHIEF CONTROLLING REVENUE AUTHORITY, BOMVAY V. MAHARASHTRA, SUGAR MILLS, Ltd.  
(The word "may" is not merely permissive but is imperative. The subject has definitely a right in certain cases to have a case referred to the High Court and that right makes it obligatory upon the revenue authority to exercise the power given to it for the benefit of the subject.)
3. ('31) Beng S M, Vol I, page 51. (High Court's judgment in Stamp Branch File

- No. 364 of 1928.)
- ('29) 16 AIR 1929 Cal 799 (800) : 57 Cal 669 : 126 Ind Cas 135 (SB), *In re Marine Insurance Policies*.
- ('26) 13 AIR 1926 Bom 51 (52) : 91 Ind Cas 299, *Usaf Dadabhai v. Chand Mohamed*.
- ('94) 1894 Bom P J 147 (147), *Reference under S. 46, Stamp Act, I of 1879*.
- ('93) 1893 Bom P J 449 (450), *Forest Contractors v. Secretary of State*.
4. ('78) 3 Cal 347 (350) (SB), *In the Matter of Thomson's Policy*.  
Also see S. 59 Note 1.
5. ('15) 2 AIR 1915 All 33 (34) : 37 All 125 : 27 Ind Cas 501 (SB), *In re Stamp Reference*.
6. ('24) 11 AIR 1924 Bom 524 (525) : 49 Bom 73 : 84 Ind Cas 421 (SB), *Waman v. Commissioner, Central Division*.



*Suit against Government.*—Where stamp duty is levied under this Act, no suit lies under S. 106 (2) of the Government of India Act, 1935, in the *High Court* for declaration and refund of excess duty collected.<sup>7</sup>

2. **Chief Controlling Revenue-authority.**—As to the definition of Chief Controlling Revenue-authority see now S. 3 (9a) of the General Clauses Act, 1897.

It is only the Chief Controlling Revenue-authority that can make a reference under the section. Thus, a Conservator of Forests cannot make a reference under this section.<sup>1</sup>

See also Note 4 on S. 56.

3. **“Case”**—**Meaning of.**—The word “case” in this section means a case which has not been finally and conclusively determined by the Collector or competent authority and which has to be disposed of in accordance with the High Court’s judgment under S. 59 (2)<sup>1</sup>. Thus, where a Collector acting under S. 40 (1) (a) grants a certificate that a particular instrument is not chargeable with duty or that it is duly stamped, the certificate is final and conclusive under S. 40 (2). The Board of Revenue is not competent to refer such a case under this section as there is no case pending before it which can be disposed of in conformity with the High Court’s judgment.<sup>2</sup> Similarly, where a Collector under S. 40 (1) (b) grants a certificate on payment of duty and penalty, the certificate is final under S. 42 (2) and consequently no reference can be made under this section.<sup>3</sup> But where the duty and penalty imposed under S. 40 (1) (b) is not paid and consequently no certificate is granted under S. 42, the Chief Controlling Revenue-authority can either itself revise the order under S. 56 (1) or refer the case to the High Court under this section.<sup>4</sup>

An order of adjudication of stamp duty passed under S. 31 without any reference to the Chief Controlling Revenue-authority under S. 56 (2), is final if certified by the Collector under S. 32 and cannot be revised by the chief Controlling Revenue-authority either directly under S. 56 (1) or indirectly by way of a reference under this section.<sup>5</sup> The reason is firstly, that the powers under S. 31 are not subject to

7. ('39) 26 AIR 1939 Bom 215 (216, 217) : I L R (1939) Bom 320 : 182 Ind Cas 835, *Dewarkhand Cement Co. Ltd. v. Secretary of State*. (Such a suit may be in other Courts.)

Section 57—NOTE 2

1. ('93) 1893 Bom P J 449 (450), *Forest Contractors v. Secretary of State*.

Also see S. 2 (8) Note 1.

Section 57—NOTE 3

1. ('02) 25 Mad 752 (766) (SB), *Reference under Stamp Act, S. 57*.

('34) 21 AIR 1934 Lah 666 (666) : 15 Lah 762 : 151 I. C. 458 (SB), *Mubarik Ahmad v. Faqir Ahmad*.

('26) 13 AIR 1926 Bom 51 (52) : 91 Ind Cas 299 (SB), *Usuf Dadabhai v. Chand Mahomed*.

2. ('02) 25 Mad 752 (756) (SB), *Reference under Stamp Act, S. 57*.

3. ('18) 5 AIR 1918 All 181 (182) : 40 All 128 : 47 Ind Cas 299 (SB), *In the matter of Khub Chand*. (NOTE.—Statement in this case that such certificate is conclusive under S. 40 (2) is not correct.)

('02) 25 Mad 752 (758, 766) (SB), *Reference under Stamp Act, S. 57*. (Per Bhashyam Ayyangar J.—Certificate of Collector acting under S. 40 (1) (b) is final under S. 42 and is not open to revision under S. 56 (1). Per Moore J.—Such certificate is not said to be conclusive in S. 42 (2) as in the case of a

certificate under S. 40 (1) (a) and therefore can be interfered with even after the certificate is granted.)

[See also ('35) 22 AIR 1935 Nag 54 (55) : 31 Nag L R 162 : 156 Ind Cas 213, *Kedarnath Raghunath v. Ratiram*. (The certificate of Collector under S. 40 (1) (a) is final and probably an order under S. 40 (1) (b) is also final.)]

Also see S. 40 Note 4 and S. 56 Note 1.

4. ('32) 19 AIR 1932 Lah 495 (496) : 13 Lah 745 : 138 Ind Cas 758 (SB), *Thakardas v. Emperor*.

('02) 25 Mad 752 (766) (SB), *Reference under Stamp Act, S. 57*. (Per Moore J. (Obiter).)

5. ('02) 25 Mad 751 (752) (SB), *Reference under Stamp Act, S. 57*.

Also see S. 32 Note 2.

[See however ('34) 21 AIR 1934 Cal 803 (804) : 61 Cal 556 : 152 Ind Cas 601 (SB), *In re United Provinces Electric Supply Co.* (Per Costello J. (Obiter)—There is nothing in the provisions of S. 32 which indicates that an adjudication under S. 31, is, necessarily, in all cases and for all purposes final. In this case the High Court, however, directed the Board of Revenue to make a reference under this section as the Collector had impounded the document and proceeded under S. 40.)]



the control of the Chief Controlling Revenue-authority under S. 56 (1) and secondly, there would be no case pending before that authority which could be disposed of in accordance with the High Court's judgment.

Where in a suit based upon an instrument bearing stamps of improper description, the instrument is validated by a certificate under S. 37 read with R. 18, Indian Stamp Rules, 1925, and the document is admitted in evidence and a decree passed, no reference can be made to the High Court under this section as the decision on the reference would be merely one on an abstract question and would have no effect on the case which is already disposed of.<sup>6</sup>

In the undermentioned cases<sup>7</sup> it has been observed that a civil Court has no power to revise a Collector's certificate under S. 32 or S. 37 except upon a reference by the Chief Controlling Revenue-authority under this section. It is submitted with respect that these decisions, in so far as they imply that a reference may be made in such cases under this section are not correct as the power of reference under this section is, as seen above, limited to *pending* cases.

Where the stamp duty on a document is determined by the Collector under S. 31 but the party refuses to pay the duty and applies to the Chief Controlling Revenue-authority for revision of the order before the document is impounded under S. 33, the Chief Controlling Revenue-authority cannot refer the case to the High Court as it has no controlling powers under S. 56 (1) in such a case; the power of the Chief Controlling Revenue-authority to refer a case under this section only arises where it has resting on it the duty of *disposing* of the case.<sup>8</sup>

Where a declaration is made by an appellate Court under S. 61 at the instance of the Collector and no steps are taken to set it aside, the declaration is final and cannot be made the subject of reference under this section.<sup>9</sup>

4. "Otherwise coming to its notice."—The words "otherwise coming to its notice" mean a case coming to its notice otherwise than on a reference by the Collector under S. 56 (2). These words are very wide and they do not merely cover cases where the revenue authority wants to move the High Court at his own instance but also cover cases where an application is made to it in that behalf by the subject.<sup>1a</sup> A case which is brought to the notice of the Chief Controlling Revenue-authority in connexion with the exercise by the Collector of any of the powers which are declared to be subject to the control of that authority is a case otherwise coming to its notice.<sup>1</sup> Thus, an application to exercise the powers of control under S. 56 (1) will be a case coming under this category. Similarly, it is conceived that an application to the Chief Controlling Revenue-authority for refund of stamp duty,

6. ('26) 13 AIR 1926 Bom 51 (52) : 91 Ind Cas 299 (SB), *Usuf Dadabhai v. Chand Mahomed*.

7. ('11) 7 Nag L R 26 (29) : 10 Ind Cas 702 (DB), *Tukaram v. Sonaji*.

('26) 13 AIR 1926 Sind 211 (213) : 94 Ind Cas 747, *Parsram Hirji v. Pars Ram Hassand*. (7 Nag L R 26 followed.)

('35) 22 AIR 1935 Sind 48 (49) : 28 Sind L R 266 : 153 Ind Cas 635, *Gangaram v. Nur Ahmed*.

(A I R 1926 Sind 211 followed.)

('01) 23 All 213 (215) : 1901 All W N 54 (SB), *Reference under Stamp Act, S. 57*. (Certificate under S. 37—High Court entertained a reference under this section.)

Also see S. 37 Note 5.

8. ('32) 19 AIR 1932 Cal 736 (737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook &*

*Kelvey*.

9. ('34) 21 AIR 1934 Lah 666 (666) : 15 Lah 762 : 151 Ind Cas 458 (SB), *Mubarik Ahmad v. Faqir Ahmed*. (The term 'case' in S. 57 (1) refers only to a case as yet undecided by a competent authority, and the decision to be given by the High Court under sub-s. (2) must clearly be a decision on which action can be taken if thought fit.) Also see S. 61 Note 10.

Section 57—NOTE 4

1. ('48) 35 AIR 1948 Bom 254 (259), (DB), *Chief Controlling Revenue Authority, Bombay v. Maharashtra Sugar Mills, Ltd.*

('02) 25 Mad 752 (754) (SB), *Reference under Stamp Act, S. 57*. (Case brought to the notice of the Revenue Board by Inspector-General of Registration.)



is a case otherwise coming to its notice which can be referred to the High Court under this section.<sup>2</sup>

Before the Revenue-authority can refer to the High Court a case "otherwise coming to its notice" the Revenue-authority should be faced with the duty of disposing of the case, as indicated by the concluding words of S. 59<sup>3</sup>. In other words the case must not have been already finally determined by a competent authority.

5. Sub-section (2).—This sub-section provides that when a case is stated under the provisions of sub-section (1) of this section it shall be decided by not less than three Judges of the High Court, Chief Court or Judicial Commissioner's Court as the case may be. It may be noted here that the reference to Chief Court or Judicial Commissioner's Court has been retained in the marginal note and sub-section (2) of this section by the A. C. A. O. while it has been omitted from S. 59 under which the procedure for disposing of the case stated is laid down. Moreover, under sub-section (1) as it stands now after the adaptation made by A. C. A. O. there is no provision made for statement of a case by the Chief Court or Judicial Commissioner's Court. A subsequent Provincial Amendment made with respect to Himachal Pradesh provides for the statement of case by the Judicial Commissioner's Court.

\*58. If the High Court, a[\* \* \*] is not satisfied that the statements contained Power of High Court, in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-  
to call for further particulars as to case stated. authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

a. The words "Chief Court or Judicial Commissioner's Court" were omitted by A. C. A. O.

\*[1879—S. 47 ; 1869—S. 41 (c).]

† 59. (1) The High Court, a[\* \* \*] upon the hearing of any such case, shall de- Procedure in dispos-  
ing of case stated. cide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

(2) The Court shall send to the Revenue-authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar ; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.

a. The words "Chief Court or Judicial Commissioner's Court" were omitted by A. C. A. O.

†[1879—S. 48 ; 1869—S. 41 (d). Cf. (1870) 33 & 34 Vict., C. 97—S. 19 (3), (4), (5) ; (1891) 54 & 55 Vict., C. 39—S. 13 (3), (4), (5).]

2. See ('09) 36 Cal 645 (646) : 2 Ind Cas 843 (SB), *In re R. A. Baxter*. (In this case the High Court entertained a reference from Board of Revenue and granted refund under S. 52 (a).)

8. ('32) 19 AIR 1932 Cal 736 (737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook & Kelvey*.

[See also ('18) 5 AIR 1918 All 181 (181, 182) :

40 All 128 : 47 Ind Cas 299 (SB), *In the matter of Khub Chand*. (Revenue-authority referring a case coming to its notice while scrutinising the monthly statement of cases of the infringement of Stamp-law submitted by the Controller under R. 204 of Stamp Manual. It should be deemed to be a case otherwise coming to its notice within S. 57 (1) provided it is not finally disposed of.)]



**1. Scope of the section.**—The section lays down the procedure to be followed by the High Court in disposing of the case stated by the Chief Controlling Revenue-authority under S. 57.<sup>1</sup> The case must be decided, under S. 57 (2) which is mandatory, by a Bench of at least three Judges of the High Court.<sup>2</sup> The High Court is to give its decision on all the questions raised by the reference and deliver a judgment containing the grounds of its decision. A copy of such judgment is then to be sent under the seal of the High Court to the referring authority who shall dispose of the case in accordance with such judgment.

The High Court's jurisdiction under this section is essentially advisory and not original<sup>2a</sup> and is confined to cases which have actually arisen for disposal by the Chief Controlling Revenue-authority as it is only such cases that can be referred to the High Court under S. 57. The High Court's opinion is only meant as a guidance to the Chief Controlling Revenue-authority in disposing of an actual case that has arisen. An abstract question not necessary for the disposal of any particular case can neither be referred to nor decided by the High Court under these provisions.<sup>3</sup>

Further, the High Court can only decide the question actually *propounded* by the Chief Controlling Revenue-authority and cannot go into questions disposed of by such authority.<sup>4</sup>

The following observations of Garth C. J. of the Calcutta High Court in the undermentioned case<sup>5</sup> are worthy of note :

“ . . . . . I feel very strongly that, in giving an opinion on questions submitted to us by the Board of Revenue, which may serve in the future as ‘guide to the Board imposing’ taxes upon the public, we are bound to advice upon the *actual facts before us*, and have no right to speculate upon the possible nature of transactions of which we have no certain knowledge.”

**2. Refund of stamp duty.**—See Notes on Section 45.

\*60. (1) If any Court, other than a Court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument by other Courts to under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court, a[\* \* \*] to which, if he were the Chief Controlling Revenue-authority, he would, under section 57, refer the same.

\*[1879—S. 49.]

Section 59—NOTE 1

1. ('26) 13 AIR 1926 Bom 51 (52) : 91 Ind Cas 299, *Usuf Dadabhai v. Chand Mahomed*.

2. ('30) 17 AIR 1930 Bom 392 (393) : 128 Ind Cas 31 (FB), *Collector, Ahmednagar v. Rambhau*.

2a. ('48) 35 AIR 1948 Bom 254 (257) (DB) *Chief Controlling Rev. Authority Bombay v. Maharashtra Sugar Mills, Ltd.* [Application under, for ordering Chief Controlling Revenue Authority to state a case under S. 57 (1), Stamp Act—High Court acting under S. 59 exercises advisory jurisdiction and not origi-

nal jurisdiction—Order under S. 45, Specific Relief Act, if passed would not contravene provisions of S. 226, Government of India Act.]

3. ('32) 19 AIR 1932 Cal 736 (736, 737) : 59 Cal 1171 : 140 Ind Cas 57 (SB), *In re Cook & Kelvey*. (After Collector has determined the duty payable under S. 31, Board of Revenue cannot refer case to High Court.)

4. ('42) 29 AIR 1942 Lah 257 (259) : 202 Ind Cas 670 (SB), *Puran Chand v. Emperor*.

5. ('78) 3 Cal 347 (350) (SB), *In the matter of Thomson's Policy*.

Also see S. 57 Note 1.



(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue-authority and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

a. The words "Chief Court or Judicial Commissioner's Court" were omitted by A. C. A. O. N.W.F.P.

#### RELEVANT REFERENCE TO OTHER ACT.

The reference to the Chief Controlling Revenue-authority is to be construed as referring to the Revenue Commissioner.—See S. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901).

#### SYNOPSIS

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|--|---|
| 1. Scope of the section.   | 5. Proper time for making reference.            |
| 2. "Any Court."  | 6. Reference after Collector's certificate.     |
| 3. "Feels doubt."  | 7. No abatement of reference on death of party. |
| 4. "As to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35." | 8. Sub-section (2).                             |
|  | 9. Sub-section (3).                             |

1. **Scope of the section.**—This section provides for a reference to the High Court by a Court just as section 57 provides for such reference by the Chief Controlling Revenue-authority. The procedure is analogous.<sup>1</sup>

The reference is to be made where the referring Court feels a doubt as to the amount of duty payable in respect of a document under Proviso (a) to S. 35. See also Note 3.

2. **"Any Court."**—The words used in sub-s. (1) of the section are: "If any Court, other than a Court mentioned in S. 57, feels doubt as to the amount of duty to be paid in respect of any instrument under Proviso (a) to S. 35." As the words "to be paid" show, the reference under this section can only be made *before* a document is admitted in evidence. Where, after the trial Court has admitted a document in evidence, the *appellate* Court feels a doubt as to the duty chargeable on such document, it cannot proceed under this section,<sup>1</sup> but can only do so under S. 61, sub-s. (2).<sup>2</sup>

3. **"Feels doubt."**—In order that this section may apply the Judge desiring to make the reference *must feel doubt* as to the amount of duty to be paid.<sup>1</sup> Where

#### Section 60—NOTE 1

1. ('06) 1906 Pun L R No. 131 p. 428 (430) (FB), *Jai Devi v. Gokal Chand*.

#### Section 60—NOTE 2

- 1.†('35) 22 AIR 1935 Mad 382 (383): 156 Ind Cas 61 (SB), *Somayya v. Anjaneyulu*.  
\*('88) 11 Mad 38 (38) (SB), *Reference under Stamp Act, S. 49*.

2. ('35) 22 AIR 1935 Mad 382 (383): 156 Ind Cas 61 (SB), *Somayya v. Anjaneyulu*. Also see S. 60 Note 2.

#### Section 60—NOTE 3

- 1.†('06) 1906 Pun L R No. 131 page 428 (430) (FB), *Jai Devi v. Gokal Chand*.  
('88) 11 Mad 38 (38) (SB), *Reference under*

#### Stamp Act, S. 49.

- ('38) 25 AIR 1938 Oudh 226 (227): 14 Luck 227: 177 Ind Cas 733 (SB), *Sitaram v. Gayadin*. (Suit on agreement—Report that agreement was insufficiently stamped—Suit decreed in oversight of report—Another report—Court ordering document to be impounded and sent to Collector for necessary action—Collector certifying document to be properly stamped—Court thinking this to be incorrect making reference under S. 60 (1)—Reference held incompetent as there was no doubt in the mind of the Court.)  
('40) 15 Luck 318 (319): 185 Ind Cas 401 (FB), *Himayatullah v. Parbhodayal*. (Munsif



he has no doubt and holds clear and definite views as to the law applicable on the question of stamp duty to be paid, he cannot make a reference under this section merely because there is no authority on the point by the High Court to which he is subordinate, or because the question is of some importance,<sup>2</sup> or because the point referred is "not altogether free from doubt."<sup>3</sup>

Where a Court considers a document to be not duly stamped and impounds it, it cannot be said to feel any doubt as to the stamp duty payable on the instrument. Hence in such a case, if the Court sends the instrument to the Collector under S. 38 and the Collector under S. 40 certifies that the document is duly stamped, the Court cannot re-open the question by making a reference under this section.<sup>4</sup>

4. "As to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35."—The doubt must relate to the *amount* of duty to be paid in respect of an instrument under Proviso (a) to S. 35.<sup>1</sup> Thus, under Proviso (a) to S. 35, instruments chargeable with a duty of one anna or half an anna, bills of exchange and promissory notes cannot be admitted in evidence even on payment of duty and penalty. If a Court, therefore, holds that a certain document is a promissory note it cannot make a reference under this section even if it feels doubt as to the amount of duty to be paid in respect of it.<sup>2</sup> But the question whether a certain document is a promissory note or an instrument evidencing an agreement to secure the repayment of a loan made upon the deposit of title deeds and if latter, what is the amount of duty chargeable on it is one that comes within the purview of the section.<sup>3</sup> So also the question whether a certain document is a bond and what amount of duty is payable on it comes under the section.<sup>4</sup> But the question whether an instrument chargeable with an adhesive stamp can be admitted in evidence on payment of deficient duty and penalty or the question whether an adhesive stamp affixed to an instrument chargeable with an impressed stamp can be taken into calculation in fixing the amount of duty and penalty payable on it is not one that can be referred under the section.<sup>5</sup>

A reference will not be competent under this section after the duty and the penalty is levied by the Court. Where, however, it appeared that the Judge had already determined to make the reference before such levy of duty and penalty but the actual reference was framed after such levy the reference was held competent.<sup>6</sup>

admitting document in evidence on payment of duty and penalty—After decision munsif sending document to Collector under S. 38—Collector holding that document was exempt from stamp duty—Munsif disagreeing with Collector and making reference to Chief Court under this section—*Held*, there was no doubt in the mind of the Court as to the amount of duty to be paid—Reference was incompetent. AIR 1938 Oudh 226 : 14 Luck 227 (SB) followed.)

2. ('32) 19 AIR 1932 Lah 172 (173) : 135 Ind Cas 200 (SB), *Amar Singh v. Asa*.

3. ('83) 1883 Bom P J 334 (FB), *Keval v. Jetha*.

4. ('38) 25 AIR 1938 Oudh 226 (227) : 14 Luck 227 : 177 Ind Cas 733 (SB), *Sitaram v. Gayadin*.

('40) 15 Luck 318 (319) : 185 Ind Cas 401

(FB), *Himayatullah v. Parbhoo Dayal*.

#### Section 60—NOTE 4

1. ('06) 1906 Pun LR No. 131 page 428 (430) (FB), *Jai Devi v. Gokal Chand*.

2. ('83) 1833 Pun Re No. 195 page 586 (588) (FB), *Baiju v. Jowahir*.

3. ('91) 1891 Bom P J 284 (DB), *Gopinath Dadaji v. Balaram Dadaji*.

4. ('22) 9 AIR 1922 Cal 452 (453) : 49 Cal 729 : 67 Ind Cas 780 (FB), *Bidhuranjan Majumdar v. Mangan Sarkar*.

5. ('91) 1891 Bom P J 284 (DB), *Gopinath Dadaji v. Balaram Dadaji*.

6. ('22) 9 AIR 1922 Cal 452 (453) : 49 Cal 729 : 67 Ind Cas 780 (FB), *Bidhuranjan Majumdar v. Mangan Sarkar*.



5. **Proper time for making reference.**—As seen in Note 2 the proper time for making a reference under this section is before the admission of an instrument in evidence by the trial Court. Where a suit is dismissed before it comes to any hearing the question of admission of an instrument in evidence is not before the Court and reference is not competent in such a case.<sup>1</sup> So also, where an instrument is admitted in evidence by the Court on payment of duty and penalty<sup>2</sup> or without such payment<sup>3</sup> reference at a later stage will not be competent because there was no doubt in the mind of the Court when the instrument was admitted.

6. **Reference after Collector's certificate.**—A reference under this section cannot be made after an instrument has been impounded and sent to the Collector under the provisions of S. 38, sub-s. (2) and his certificate obtained under S. 40 of the Act.<sup>1</sup> In such a case, the Court cannot be said to have felt doubt as to the amount of stamp duty payable on the instrument.

7. **No abatement of reference on death of party.**—In the undermentioned Patna case<sup>1</sup> it was observed as follows :

“The widow has died since the reference was made, but since the reference is made by the District Judge for instructions on a point of difficulty arising under the Indian Stamp Act, no question of abatement arises on account of the death of the widow.”

These observations suggest that a reference under this section will not abate by reason of the death of the party after such reference. In the above case, the widow was the *executant* of the instrument.

8. **Sub-section (2).**—Sub-section (2) of the section provides that the Court to which reference is made shall send a copy of its judgment to the Chief Controlling Revenue-authority and another like copy to the Judge making the reference. The corresponding S. 49 of Act I of 1879 did not contain provision for sending a copy to the Chief Controlling Revenue-authority.

The sub-section requires the Court to which reference is made, to “deal with the case as if it had been referred under S. 57.” Under S. 59, the Court to which a case is referred under S. 57, is to “decide the questions raised thereby.” Hence, even in a reference under S. 60, it would seem that the Court should decide the questions raised by the reference. In the undermentioned case<sup>1</sup> Iqbal Ahmad, Acting C. J., of the Allahabad High Court observed as follows :—

“After all, on a reference of the present description (Reference under S. 60, stamp Act), the broad question that falls to be decided is whether or not the instrument is sufficiently stamped and this Court is not called upon to specifically answer the questions formulated in the reference.”

Thus, it would seem, the “questions raised by a case” are not necessarily identical with the “questions formulated in a reference.”

#### Section 60—NOTE 5

1. ('06) 1906 Pun L R No. 131 page 428 (430) (FB), *Jai Devi v. Gokal Chand*.
2. ('40) 15 Luck 318 (319) : 185 Ind Cas 401 (FB), *Himayatullah v. Parbhoo Dayal*.
3. ('38) 25 AIR 1938 Oudh 226 (227) : 14 Luck 227 : 177 Ind Cas 733 (SB), *Sitaram v. Gayadin*.

#### Section 60—NOTE 6

- 1.†('06) 1906 Pun L R No. 131, page 428 (430) (FB), *Jai Devi v. Gokal Chand*.
- ('38) 25 AIR 1938 Oudh 226 (227) : 14 Luck 177

Ind Cas 733 (SB), *Sitaram v. Gayadin*.  
(‘40) 15 Luck 318 (319) : 185 Ind Cas 401 (FB), *Himayatullah v. Parbhu Dayal*.

#### Section 60—NOTE 7

1. ('38) 25 AIR 1938 Pat 33 (33) : 17 Pat 95 : 172 I. C. 847 (SB), *In the matter of Khetramoni Debya*.

#### Section 60—NOTE 8

1. ('41) 28 AIR 1941 All 243 (248) : 1 L R (1941) All 471 : 195 Ind Cas 791 (FB), *L. H. Sugar Factory, Pilibhit v. Moti*.



9. Sub-section (3).—Under this sub-section reference by a Court subordinate to a District Court is to be made through the District Court. Where the Judge of the Subordinate Court feels no doubt as to the amount of duty to be paid and does not ask the District Court to have the case referred to the High Court, the District Court cannot, itself, make the reference under sub-s. (1) of this section.<sup>1</sup>

**\*61.** (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding, under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and ~~may~~ impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument :

Provided that—

- (a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty ;
- (b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

#### SYNOPSIS

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|--|--|
| 1. Scope and object of the section.                        | 7. Notice of application by Collector.     |
| 2. Instruments to which this section applies.              | 8. "May record a declaration."             |
| 3. Criminal Court.   | 9. "Determine the amount of duty."         |
| 4. "Makes any order admitting any instrument in evidence." | 10. Order under sub-section (2), if final. |
| 5. Courts empowered to act under this section.             | 11. Prosecution by Collector.              |
| 6. Application by Collector—Form of.                       | 12. Proviso (b).                           |

\*[1879—S. 50.]

Section 60—NOTE 9

Stamp Act, S. 49. (Section 49 of Act I of

1. ('88) 11 Mad 38 (38) (SB), *Reference under* | 1879.)



1. **Scope and object of the section.**—This section provides for revising the decisions of subordinate Courts regarding the sufficiency of stamp duties paid on instruments.

This is the only section in the Act under which the admission of an instrument in evidence can be called in question on the ground that it has not been properly stamped.<sup>1</sup> It does not, however, affect the provisions of S. 36, that is to say, a Court acting under this section has to regard the instrument as *admissible* in evidence, and, at the same time, to determine the sufficiency of the duty.<sup>2</sup> The appellate Court under this section, therefore, cannot reject a document as inadmissible in evidence owing to its not being duly stamped, after the document has once been admitted by the trial Court.<sup>2a</sup> (See Proviso (b) and Notes on S. 36.)

The object of the section is the protection of the Government revenue.<sup>3</sup> For this purpose it empowers an appellate Court or a Court of reference, of its own motion or on the application of the Collector, to take into consideration the order of a subordinate Court and to ascertain whether the Government revenue has suffered and whether a higher duty and penalty than that required by the Court of first instance ought to have been demanded from the person filing the instrument.<sup>4</sup> If the Court is of such opinion it may make a declaration to that effect and determine the proper duty and penalty. It may then impound the instrument and send the same along with a copy of the declaration to the Collector who may prosecute the person liable to pay the duty and penalty.

An *appellate* Court has no power to make a reference to the High Court under S. 60 which only applies *before* the admission of a document in evidence. *After* a document has been admitted in evidence by the trial Court, the appellate Court

#### Section 61—NOTE 1

1. ('85) 8 Mad 564 (566) (SB), *Reference under Stamp Act, S. 46.*
- ('21) 8 AIR 1921 Cal 613 (614) : 77 Ind Cas 845 (DB), *Runglal Kalooram v. Kedarnath.*
- ('19) 6 AIR 1919 Cal 235 (239) : 51 Ind Cas 88 (DB), *Biswanath v. Govindachandra.*
- ('89) 13 Bom 493 (496) (DB), *Gurpadapa Bingrapa v. Naro Vithal Kulkarni.*
- ('89) 13 Bom 449 (457) (FB), *Devachand v. Hirachand Kamaraj.*
- ('25) 12 AIR 1925 Mad 1215 (1215) : 91 Ind Cas 540 (DB), *Nagappa Chetty v. V. A. A. R. Firm.*
- ('18) 5 AIR 1918 Mad 1066 (1068) : 39 Ind Cas 448 (DB), *Seshayya v. Venkata Subbayya.*
- ('82) 4 Mad 137 (140) : 6 Ind Jur 127 (DB), *Venkata Chinnaya Rau v. Venkataramaya Garu.*
- ('12) 39 Cal 669 (678) : 16 Ind Cas 153, *Bombay Co. Ltd. v. National Jute Mills Co. Ltd.*
- ('23) 10 AIR 1923 Nag 109 (110) : 67 Ind Cas 310, *Raje Udajiram v. Rajeshwar.*
- ('86) 12 Cal 64 (66, 67) (DB), *Punchanund Dass Chowdhry v. Taramoni Chowdhraim.* [See however, ('80) 2 All 554 (559) : 5 Ind Jur 92 (DB), *Safdar Ali Khan v. Lachman Das.* (Held that an objection may properly be taken in a Court of first appeal to an unstamped document, and such Court is bound to entertain the objection and may direct that the document be stamped and the penalty imposed—Case before introduction of this section.)]

2. ('25) 12 AIR 1925 Mad 1215 (1215) : 91 Ind Cas 494 (DB), *Nagappa Chetty v. V. A. A. R. Firm.* (Where a document has been admitted by the trial Judge in evidence it is not open in appeal to question that admission. (AIR 1915 Cal 280 and AIR 1916 PC 41 : 43 Ind App 264 : 38 All 494 (PC) foll.)—It is open to the appellate Court to send the document on for the proper collection of penalty.)
- ('10) 7 Ind Cas 582 (583) (DB) (Cal), *Syed Basir-ud-din Ahmed v. Kalika Prasad Singh.* Also see S. 36 Note 6.
- 2a. ('82) 4 Mad 137 (140) : 6 Ind Jur 127 (DB), *Venkata Chinnaya Rau v. Venkataramaya Garu.*
- ('02) 25 Mad 752 (758) (SB), *Reference under Stamp Act, S. 57.*
3. ('10) 7 Ind Cas 582 (583) (DB) (Cal), *Syed Basir-ud-din Ahmed v. Kalika Prasad Singh.* [See also ('21) 8 AIR 1921 Cal 613 (616) : 77 Ind Cas 845 (DB), *Rung Lal Kalooram v. Kedar Nath Kesriwal.* (Under S. 36 if any penalty is to be exacted, it can only be exacted under S. 61—The revenue then is protected, so far as it is protected by that section.)]
4. ('86) 12 Cal 64 (66, 67) (DB), *Punchanund Dass Chowdhry v. Taramoni Chowdhraim.*
- ('02) 25 Mad 752 (758) (SB), *Reference under Stamp Act, S. 57.*



can act, if at all, only under this section.<sup>5</sup>

So also, after a document has been admitted in evidence, and judgment has been delivered in the case, the Court which has admitted the document cannot re-open the question of admissibility of the document and impound the document. The only remedy, if any, in such a case, is that under this section.<sup>6</sup>

The Chief Controlling Revenue-authority is not a necessary party to a proceeding under this section.<sup>7</sup>

**2. Instruments to which this section applies.**—Sub-section (2) shows that this section only applies to instruments *admissible* under S. 35 on payment of duty and penalty. Hence, this section does not apply to promissory notes, etc., which are excepted under Proviso (a) to S. 35 and which, if not duly stamped, cannot be admitted in evidence even on the payment of penalty.<sup>1</sup>

**3. Criminal Court.**—Section 50 of the Act of 1879 did not apply to *criminal* Courts though, in regard to certain proceedings, such Courts were within the provisions relating to the impounding of documents and their admission in evidence on payment of penalty. The result was that if a criminal Court admitted a document in such proceedings, its decision as to the amount of duty and penalty payable became final while a similar decision of a civil or revenue Court was subject to revision under S. 50. This anomaly has now been remedied by making this section applicable to criminal Courts also in regard to the above-mentioned proceedings.<sup>1</sup>

**4. "Makes any order admitting any instrument in evidence."**—Sub-section (1) of this section empowers an appellate Court to take into consideration the order made by a subordinate Court admitting an instrument in evidence. The question arises whether the order contemplated here is an express order made by the subordinate Court or whether it can be an implied order. On this question there is a conflict of opinion. It was held by the Chief Court of the Punjab in *Piran Ditta v. Mangal Singh*<sup>1</sup> that this section has no applicability in a case where the Court of first instance makes no order with regard to the stamp. Following this decision the High Court of Lahore has held that an order contemplated by this section must have real existence and that an order by implication cannot be taken into consideration by an appellate Court and cannot validly form the subject-matter of consideration for the purpose of issuing a declaration.<sup>2</sup> Dissenting from the view of the Lahore High Court, the Judicial Commissioner's Court of Peshawar has held that

5. ('35) 22 AIR 1935 Mad 382 (383) : 156 Ind Cas 61 (SB), *Somayya v. Anjaneyulu*. Also see S. 60 Note 2.

6. ('49) 36 AIR 1949 Nag 214 (215) : ILR (1948) Nag 950, *Paiku Kashinath v. Gaya*. (Case re-opened after signing of decree to impound document—High Court has jurisdiction to revise order under S. 115, Civil P. C.)

('37) 24 AIR 1937 Mad 763 (764) : 174 Ind Cas 20, *Panakala Rao v. Kumaraswami*.

7. ('45) 32 AIR 1945 Nag 178 (179) : ILR (1945) Nag 928 *Lokmat Motor Service v. New Lokmat Lodging*. (AIR 1943 Nag 97 : ILR (1943) Nag 520 followed.)

('43) 30 AIR 1943 Nag 97 (98) : ILR (1943) Nag 520 : 204 Ind Cas 94, *In re Narayandas Nathuram*.

Section 61—NOTE 2

1.†('35) 22 AIR 1935 All 410 (411) : 154 Ind

Cas 517, *Lakshmidas v. Lakhoram*.

('89) 13 Bom 449 (453) (FB), *Devachand v. Hirachand Kamraj*.

('83) 1883 Pun Re No. 195 p. 586 (588) (FB), *Baiju v. Jowahir*.

Section 61—NOTE 3

1. See the Statement of Objects and Reasons of the Bill of 1897.

Section 61—NOTE 4

1. ('08) 1908 Pun Re No. 108 p. 498 (500) : 1908 Pun W R No. 207. (Document admitted in evidence without demur or objection.)

2. ('46) 33 AIR 1946 Lah 265 (266) : 222 Ind Cas 566 (DB), *Emperor v. Gian Chand*. (Words "making an order" make it perfectly clear that there must be a formal expression of opinion by the Court—AIR 1935 Lah 909 Foll and AIR 1929 Lah 770 :



the order may be an implied one.<sup>3</sup> It is submitted that the Peshawar view is correct.

See also Note 2 on section 36.

5. **Courts empowered to act under this section.**—The power to revise the decision of a Court as to the sufficiency of stamp duty is given to "the Court to which appeals lie from, or references are made by, such first-mentioned Court." Clearly, therefore a Court admitting an instrument in evidence on payment of duty and penalty cannot afterwards revise its own order and itself make a declaration under sub-s. (2).<sup>1</sup>

References from Provincial Small Cause Courts are made to the High Court. Hence the Collector can make an application under this section to the High Court in respect of an order of a Small Cause Court admitting in evidence an insufficiently stamped instrument.<sup>2</sup>

But no appeal or reference lies to the High Court from the Court of a Mamlatdar. It is, therefore, not open to the Collector to make an application to the High Court in reference to an instrument received in evidence by the Mamlatdar.<sup>3</sup>

A bond, which was the basis of a suit, was endorsed by the Court showing that it was admitted, though no separate order admitting the instrument was made. The suit was decreed and an appeal to the High Court was dismissed. An application under this section was made to the High Court by the Collector. It was contended on behalf of the non-applicant that the order impliedly admitting the instrument was contained in the decree of the lower Court which was merged in the decree of the High Court and that, therefore, the application could only lie to their Lordships of the Privy Council and not to the High Court. It was held that as the endorsement upon the instrument was made at the time of its production and not on the date of the decree, the order admitting the instrument could not be implied from the decree which was merged in the decree of the High Court and that, therefore, the application to the High Court was competent.<sup>4</sup>

Where an appeal from the decree of a Sub-Judge lay to the High Court but the declaration under this section was made by the District Judge it was held that the declaration made by the District Judge could be treated as a declaration made by the High Court since the High Court could make it of its own motion and also because the Collector would refer the matter to the High Court.<sup>5</sup>

6. **Application by Collector—Form of.**—The power to be exercised by the appellate Court under this section is by way of revision as is shown by the marginal note to the section. But the intention of the Legislature was not that there should be a regular application in writing in the form of a revision by the Collector. A letter from the Collector is, therefore, a sufficient compliance with the requirement of this section and a declaration will be given thereon.<sup>1</sup>

11 Lah 77 distinguished.)  
(35) 22 AIR 1935 Lah 909 (910): 161 Ind Cas 484, *Mirza Faridun Beg v. Emperor*.  
3. (36) 23 AIR 1936 Pesh 186 (188): 165 I. C. 95, *Collector of Peshawar v. Mohammad Ashraf Khan*. (Endorsement on document showing that it has been admitted—No separate order admitting document—Witnesses examined on its basis and document relied upon in judgment—Held, all this amounted to an order admitting the document and therefore an order that can form the subject-matter of proceedings under S. 61.)

Section 61—NOTE 5

1. (85) 88 Mad 564 (566) (SB), *Reference*

*under Stamp Act*, S. 46.

2. (92) 15 Mad 259 (260, 261) (SB), *Reference under Stamp Act*, S. 50.

3. (97) 1897 Bom P J 118 (FB), *Dayaji v Vaman*.

4. (36) 23 AIR 1936 Pesh. 186 (188): 165 Ind Cas 95, *Collector of Peshawar v. Mohammad Ashraf Khan*.

5. (35) 22 AIR 1935 Lah 900 (910): 161 Ind Cas 484, *Mirza Faridun Beg v. Emperor*.

Section 61—NOTE 6

1. (42) 29 AIR 1942 All 147 (148): ILR (1942) All 157: 199 Ind Cas 252 (FB), *Shyam Lal Bidhi Chand v. Mukund Lal*.



**7. Notice of application by Collector.**—When an application under this section is made by the Collector, no notice to the person liable is required to be issued.<sup>1</sup>

**8. "May record a declaration."**—Sub-section (2) provides that the appellate Court may record a declaration that the instrument should not have been admitted in evidence by the lower Court without the payment of duty and penalty under S. 35, or without the payment of a higher duty and penalty. Obviously no necessity to make a declaration arises where the Court of appeal or reference considers that the amount of duty and penalty paid is sufficient and the instrument has been properly admitted in evidence under S. 35. No action can be taken under the section merely because the *Collector* moves the Court.<sup>1</sup>

The sub-section does not empower the appellate Court to make a declaration in the case of an instrument in respect of which an *excess* duty and penalty have been levied. The remedy in such a case is to apply to the Chief Controlling Revenue-authority for the refund of excess under S. 45.<sup>2</sup> In the undermentioned case,<sup>3</sup> however, the High Court of Allahabad made a declaration, on an application by the Collector under this section, that an excess duty and penalty had been recovered. It is submitted that the power under this section was wrongly exercised.

The word "may" used in this sub-section shows that the power to record a declaration is discretionary and an appellate Court may refuse to exercise it.<sup>4</sup>

**9. "Determine the amount of duty."**—Sub-section (2) empowers an appellate Court to determine the amount of duty chargeable; it does not, however, say whether the Court should also determine the amount of penalty. But Proviso (a) to sub-s. (4), which must be read along with this sub-section, clearly shows that the determination by the Court must be of both the duty and penalty. Hence the Court has to make a declaration as to the amount of duty as also the penalty.<sup>1</sup> In the undermentioned cases,<sup>2</sup> however, the High Court acting under this section seems merely to have determined the duty payable.

Though the Court has to determine the duty and penalty, it is not empowered to levy the same. That power is confined to the Collector by sub-s. (4). The levy of the duty and penalty by the Court is, therefore, illegal.<sup>3</sup> The High Court of Bombay has, however, held that without adopting the procedure of this section and notwithstanding its terms, the appellate Court can levy the duty and penalty provided it does not call in question the admission of the instrument in evidence on account of its not having been duly stamped.<sup>4</sup> It is submitted that the decision cannot be accepted as laying down the correct law.

Section 61—NOTE 7

1. ('26) 13 AIR 1926 Oudh 397 (397) : 93 Ind Cas 909 (DB), *Deputy Commissioner, Partabgarh v. Ram Harakh*.

Section 61—NOTE 8

1. ('34) 2 AIR 1934 Oudh 344 (344) : 151 Ind Cas 532 (DB), *Jang Bahadur v. Bhagoo*. ('82) 4 Mad 137 (140) : 6 Ind Jur 127 (DB), *Chinnaya Rau v. Venkataramaya Garu*.
2. ('33) Mad S M, p. 58.
3. ('34) 21 AIR 1934 All 1052 (1053) : 152 Ind Cas 41 (DB), *In re Sukhdeo Prasad*.
4. ('33) Mad S M, p. 58. (Citing, B. P. 520, 6th November 1893.—Under the latter part of S. 61, however, and the first proviso thereto there is nothing to prevent the Collector from prosecuting the executant of the document, if he considers that there was an intention on his part of evading payment of the proper duty.)

Section 61—NOTE 9

- 1.†('36) 23 AIR 1936 Cal 556 (561) : 63 Cal 1098 : 167 Ind Cas 713 (DB), *Bhupati Nath v. Basanta Kumar*. ('24) 11 AIR 1924 Nag 408 (409) : 78 Ind Cas 956, *Nilkanth v. Kesheorao*. ('24) 11 AIR 1924 Oudh 110 (110) : 73 Ind Cas 307, *Rajendra Narayan v. Ghaffoor Khan*. [See also ('27) 14 AIR 1927 Bom 195 (208) : 51 Bom 247 : 101 Ind Cas 229 (DB), *Lakshmidas & Co. v. Dorab Tata*.]
2. ('36) 23 AIR 1936 Lah 838 (839) : 165 Ind Cas 82, *Roshanlal v. Mt. Vidya Wanti*. ('26) 13 AIR 1926 Cal 877 (879) : 53 Cal 515 : 95 Ind Cas 483 (DB), *Jayman Bewa v. Easin Sarkar*.
3. ('24) 11 AIR 1924 Oudh 110 (110) : 73 Ind Cas 307, *Rajendra Narayan v. Ghaffoor Khan*.
4. ('97) 1897 Bom P J 382 (FB), *Adarji*



10. **Order under sub-section (2), if final.**—It has been held by the Chief Court of Oudh that the word "Court" used in this section has no other meaning than that which it bears in S. 115 of the Civil Procedure Code ; and hence a High Court has got power to entertain a revision under that section against the order or declaration of the lower Court made under this section.<sup>1</sup> The order cannot, however, be made the subject of a reference to the High Court under S. 57.<sup>2</sup>

11. **Prosecution by Collector.**—When the Collector receives the copy of the declaration and the instrument, he may proceed to prosecute the person liable to pay the duty and penalty as adjudged by the appellate Court if he does not pay the same ; or even when he makes such payment, if the Collector thinks that such person has committed an offence against the Stamp-law with an intention of evading payment of the proper duty.<sup>1</sup> Nothing contained in the order admitting the instrument in evidence, or in any certificate granted under S. 42, or in S. 43, has any validity against such prosecution.<sup>2</sup>

It is for the Collector to determine whether prosecution should be instituted or not irrespective of any action by the appellate Court under sub-section (2).<sup>3</sup>

Suppose, the appellate Court *refuses* to make a declaration under this section in respect of a document which has been admitted in evidence by the lower Court on payment of duty and penalty. In such a case, S. 43 will apply and the Collector can prosecute for a stamp offence provided it appears to him that the offence was committed with the intention of evading the Stamp-law.<sup>4</sup>

Even where the trial Court has held that the document was duly stamped or that it did not require any stamp and the appellate Court also declines to take any action under this section, it would appear from S. 43 that a prosecution will not be barred ; inasmuch as, under S. 40 (2), it is only in the case of a certificate by the *Collector* (that a document is duly stamped or does not require a stamp), that it is provided that the certificate shall be conclusive evidence of the matters stated therein.

12. **Proviso (b).**—Proviso (b) expressly declares that the declaration of the appellate Court under sub-s. (2) as to the higher duty and penalty shall be valid only for the purpose of a criminal prosecution, if the Collector deems fit to institute such prosecution ; but that such a declaration shall not affect the validity of the order of the Subordinate Court admitting it in evidence or of the certificate granted by it under S. 42, that the proper stamp duty and penalty have been levied notwithstanding that the same is less than that declared by the appellate Court.<sup>1</sup>

*Dorabji v. Rajaram Jhurakhanlal.*

[See also ('24) 11 AIR 1924 Nag 408 (409) : 78 Ind Cas 956. *Nilkanth v. Kesheorao*. (High Court directed the recovery of deficient stamp duty and penalty—NOTE.—This was not authorised by the section.)]

#### Section 61—NOTE 10

1. ('43) 30 AIR 1943 Oudh 169 (171) : 204 Cas 363, *Hubraji v. Deputy Commissioner, Fyzabad*.

2. ('34) 21 AIR 1934 Lah 666 (666) : 15 Lah 762 : 151 Ind Cas 458 (SB), *Mubarik Ahmad v. Faqir Ahmad*. (Section 57 only applies to pending cases.)

Also see S. 57 Note 3.

[But see ('33) Mad S M, p. 58. (Citing, BP 821, 8th March 1884. View not correct.)]

#### Section 61—NOTE 11

1. ('02) 25 Mad 752 (757, 758) (SB), *Reference under Stamp Act, S. 57*.

2. ('02) 25 Mad 752 (759) (SB), *Reference under Stamp Act, S. 57*.

3. ('26) 13 AIR 1926 Oudh 397 (397) : 93 Ind Cas 909 (DB), *Deputy Commissioner, Partabgarh v. Ram Harakh*.

4. ('33) Mad S M, p. 58. (Citing, B P 520, 6th November 1893.)

#### Section 61—NOTE 12

1. ('1902) 25 Mad 752 (758) (SB), *Reference under Stamp Act, S. 57*.

('45) 32 AIR 1945 Nag 178 (179) : ILR (1945) Nag 928. *Lokma Motor Service v. New Lokmat Lodging*. (Decision of lower Court cannot be revised.)



## CRIMINAL OFFENCES AND PROCEDURE.

Penalty for executing, \*62. (1) Any person—  
etc., instrument not duly  
stamped.

- (a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange <sup>a</sup>[payable otherwise than on demand] <sup>b</sup>[\* \*] or promissory note without the same being duly stamped ; or
- (b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped ; or
- (c) voting or attempting to vote under any proxy not duly stamped ; shall for every such offence be punishable with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

a. Inserted by S. 5 of the Indian Finance Act, 1927 (V of 1927).

b. Word "cheque" was omitted, *ibid.*

## RELEVANT REFERENCE TO OTHER ACT.

For modifications of provisions of S. 62 in respect of instruments to which the Indian (Specified Instruments) Stamp Act, 1924 (XIII of 1924) applies, see S. 3 of that Act reproduced in Appendix J.

## SYNOPSIS

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|--|--|
| 1. Offences under the repealed Stamp Acts. | 15. "Instrument chargeable with duty."               |
| 2. Mens rea.                               | 16. Instruments chargeable under Act XLIII of 1923.  |
| 3. Abetment of offences under this Act.    | 17. Duly stamped. See Notes on S. 2 (11).            |
| 4. Sanction of the Collector.              | 18. Receiving an unstamped instrument is no offence. |
| 5. "Person."                               | 19. Clause (c)—Proxy.                                |
| 6. Corporation.                            | 20. Proviso.   |
| 7. Liability of master for act of servant. | 21. Sub-section (2).                                 |
| 8. Clause (a)—Scope.                       | 22. "Shall be punishable."                           |
| 9. "Issuing."                              | 23. Ignorance of law.                                |
| 10. "Accepting."                           | 24. "Fine."  |
| 11. "Receiving the payment of."            | 25. Imprisonment in default of fine.                 |
| 12. Clause (b)—Scope.                      |  |
| 13. "Executing."                           |  |
| 14. "Signing otherwise than as a witness." |  |

\*[1879—S. 61 ; 1869—Ss. 29, 30 ; 1862—Ss. 3, 11, 23 ; 1860—Ss. 3, 9. Cf. (1870) 33 & 34 Vict., C. 97—Ss. 54 (1), 102 (3), 127 ; (1891) 54 & 55 Vict., C. 39—Ss. 38 (1), 80(3), 107.]



1. **Offences under the repealed Stamp Acts.**—It is an established principle that a repealed Act, in the absence of saving clauses and except as to the transactions past and closed, must be considered as if it had never existed.<sup>1</sup> In the absence of any express saving clause in a repealing Act, S. 6 of the General Clauses Act of 1868 and the corresponding S. 6 of the General Clauses Act of 1897, operate as a saving provision in respect of the repealing Acts passed after the commencement of the above Acts, and, unless a different intention appears, a repeal of an Act does not affect any penalty, forfeiture or punishment incurred in respect of any offence against the repealed enactment.<sup>2</sup> Thus an offence against the provisions of Act X of 1862 which was repealed by Act XVIII of 1869 was held to be an offence even after its repeal and the person was prosecuted for the same under the provisions of the repealed Act of 1862.<sup>3</sup>

2. **Mens rea.**—A *guilty intention*, such as an intention to defraud the Government is an element in some of the offences defined under this Act. (See Ss. 64, 65 and 68). But the offence under this section does not depend on any such *intention*. The offence under the section is complete as soon as the act specified therein is done, irrespective of any intention on the part of the offender to defraud the Government or any knowledge on his part that his act would cause a wrongful loss of revenue to the Government.<sup>1</sup> But such guilty intention or its absence may be taken into account at the time of passing the *sentence*.<sup>2</sup>

But where an instrument is impounded and sent to the Collector under S. 38 and the duty and penalty are thereafter paid to the Collector under S. 40, the offender cannot be prosecuted unless it appears to the Collector that the accused has acted with the intention of evading the payment of stamp duty.<sup>3</sup> (See also Note 4.)

#### Section 62—NOTE 1

1. Halsbury, *Laws of England*, Vol. 27 page 197.  
(1829) 109 E R 278 (279) : 7 L J (O S) K B 335 : 149 R R 735 (752), *Surtees v. Ellison*.  
(1764) 96 E R 259 (259) : 1 Wm & Bl 451 (451), *Miller's Case*.

2. See Section 6 (d) of the General Clauses Act (Act X of 1897).

[See also ('77) 1 All 599 (602) : 2 Ind Jur 723 (DB), *Empress of India v. Mulua*. (Held, where a person committed murder in the year 1855, that such person was punishable under the Regulation, though they were repealed by Act XVII of 1862.)]

- [See however ('77) 2 Cal 225 (228) (FB), *Empress of India v. Diljour Miser*. (Section 6 of General Clauses Act, 1868 was held inapplicable to the particular case as the repealing Act in question was passed before the General Clauses Act of 1868.)]

3. ('74) 7 Mad H C R (App) 8 (9) : 1 Weir 781, *High Court Proceedings*, 30th July 1872.

#### Section 62—NOTE 2

- 1.†('26) 13 AIR 1926 All 389 (390) : 93 Ind Cas 694, *Emperor v. Pannalal*.

- ('34) 21 AIR 1934 All 201 (203) : 56 All 680 : 150 Ind Cas 672 (DB), *Raghubar Dayal v. Emperor*.

- ('09) 31 All 36 (38) : 1 Ind Cas 568 (DB), *Emperor v. Dungar Singh*.

- ('71) 6 Mad H C R (App) 5 (5) : 1 Weir 900, *High Court Proceedings*, 28th November 1870.

- ('89) 12 Mad 231 (233) : 1 Weir 903, *Queen-Empress v. Venkatrayadu*.

Also see S. 43 Note 1.

2. ('34) 21 AIR 1934 All 201 (203) : 56 All 680 : 150 Ind Cas 672 (DB), *Raghubar Dayal v. Emperor*.

- ('09) 31 All 36 (38) : 1 Ind Cas 568 (DB), *Emperor v. Dungar Singh*.

- ('33) 20 AIR 1933 Oudh 461 (461, 462) : 146 Ind Cas 559, *Emperor v. Ahmad Zaman Khan*. (Conviction upheld but sentence reduced as proper duty payable was a matter about which genuine doubts could be entertained.

- ('77) 2 Cal 399 (403) (FB), *Empress v. Dwarakanath Chowdhry*.

3. ('19) 6 AIR 1919 All 40 (41) : 54 Ind Cas 406, *Kanhaiyalal v. Emperor*.

[See also ('27) 14 AIR 1927 All 238 (238) : 99 Ind Cas 598, *Emperor v. Ishwar Dayal*. (Section 562, Criminal P. C., does not apply to offences under Stamp Act. But in absence of dishonest intention on accused's part he must be acquitted : AIR 1919 All 40 followed.)]



**3. Abetment of offences under this Act.**—The Stamp Act of 1869 contained a provision for the punishment of abetment of offences under the Stamp Act, in S. 36 which was as follows :

“Whoever abets within the meaning of the Indian Penal Code any offence made punishable by this Act shall be punished with the punishment hereinbefore provided for such an offence.”

In the year 1870, the Indian Penal Code, 1860, was amended by Act XXVII of 1870 which substituted for the old S. 40 of the Code a new provision making an abetment of an offence under a special law an offence under the Penal Code. This amendment in the Penal Code made S. 36 of the Stamp Act of 1869 unnecessary and it was, therefore, omitted from the Stamp Act of 1879. The abetment of an offence under this Act now constitutes an offence under the Penal Code and is punishable under S. 109 of the Code with the punishment provided for the offence.

Merely accepting or receiving an unstamped or insufficiently stamped instrument is not an abetment of an execution of such instrument within the meaning of this section.<sup>1</sup> A person paid a sum of money to his creditor who, on being asked for a receipt, said that he could not give a stamped receipt as he had no stamp and the person accepted the unstamped receipt promising to affix a stamp himself. The person was prosecuted for abetment of an offence under this section. It was held that he was not guilty as he did not aid the offence by any act on his part nor illegally omit to do anything which he was bound by law to do.<sup>2</sup>

Where a creditor gets the entries of the debts in his account books signed by the debtors by way of acknowledgment of the debt due without applying a proper stamp thereto, he is guilty of abetting the offence under this section.<sup>3</sup>

A purchaser of gold ornaments got the entries of the transaction written in his account book by the sellers of the ornaments, who also stated in the entry that they had received the price. These entries were held to amount to a receipt and the purchaser in obtaining them without applying proper stamp was held guilty of abetment of an offence under this section.<sup>4</sup>

#### Section 62—NOTE 3

1. ('83) 7 Bom 82 (83) (DB), *Empress v. Janki*. (Instrument operating as a bond and a counterpart of a lease.)

\*('95) 1895 Pun Re Cr., No. 18 page 55 (56), *Hira v. Queen-Empress*. (Receipt.)

('84) 1884 All W N 37 (37), *Empress v. Bhairon*. (Bond).

\*('98) 20 All 440 (442) : 1898 All W N 108, *Queen-Empress v. Nihalchand*. (Promissory note.)

('05) 1 Nag L R 163 (164), *Emperor v. G. Rajlingam*. (Do.)

('83) 1883 All W N 145 (145), *Empress v. Gopal Das*.

[But see (1900) 23 Mad 155 (158) : 1 Weir 907 (DB), *Queen-Empress v. Somasundaram Chetti*.]

2. ('85) 8 All 18 (19) : 1885 All W N 317, *Queen-Empress v. Mithu Lal*.

3. ('76) 1876 Pun Re Cr., No. 23 page 37 (40) (DB), *Crown v. Prem Singh*.

('85) 1885 All W N 30 (30), *Empress v. Bahadur Singh*. (By accepting the unstamped acknowledgment the accused had intentionally aided the illegal omission.)

('97) 10 C P L R (Cr.) 1 (5, 6), *Empress v. Bansidhar*. (An account-book called *Sarkhatt bahi* contained entries by the debtors acknowledging a certain sum to be due to them and also promising to pay interest at a specified rate. Each entry was stamped with a one-anna stamp. Held, the entries amounted to an agreement requiring an eight anna stamp and the Mahajn to whom the account book belonged, and who took those entries from his debtors was guilty of abetment.)

('34) 21 AIR 1934 Nag 261 (263) : 31 Nag L R 108 : 153 Ind Cas 952, *Chhaganlal v. Emperor*. (Creditor intentionally obtaining signature of debtors on his own account books and separate chittis attested and suffering himself to pay penalty for insufficient stamps—Obligation to supply stamps though on debtors, yet presumption is against such creditor about deliberately practising such system—Creditor held guilty of abetment.)

4. ('34) 21 AIR 1934 All 201 (203) : 56 All 680 : 150 Ind Cas 672 (DB), *Raghubar Dayal v. Emperor*.



4. **Sanction of the Collector.**—A sanction of the Collector or any other officer duly authorised in that behalf under S. 70 must be obtained before the institution of a prosecution for an offence under this section. A prosecution without such sanction is illegal.<sup>1</sup>

In the case of instruments in regard to which a penalty has been paid under Chap. IV, S. 43 expressly provides that a prosecution shall not be instituted unless it appears to the Collector that the offence was committed with the intention of evading the payment of stamp duty.

Instruments referred to in cl. (a) of sub-s. (1) of this section are not instruments in respect of which any penalty under Chap. IV can be paid and hence S. 43 does not apply to them. No question of intention therefore arises in sanctioning a prosecution for an offence under that clause.

Clause (b) of sub-s. (1), on the other hand, covers instruments which, if not duly stamped, can be admitted in evidence on payment of duty and penalty. In the case of such instruments, therefore, if the penalty has been paid, no prosecution can be instituted unless it appears to the Collector that the offence has been committed with the intention of evading the stamp duty.<sup>1a</sup>

The provisions of Ss. 40 and 43 are mandatory and it has been held that before a prosecution is instituted in respect of instruments in case of which penalty and duty can be recovered, the Collector is *bound* to give the party concerned, an opportunity to pay the duty and penalty.<sup>2</sup> It has been held that a prosecution instituted without giving such an opportunity is bad in law and that a conviction in such cases must be set aside.<sup>3</sup>

The Collector is not required to make a formal enquiry or to record any proceedings at the time of granting a sanction.<sup>4</sup> Nor is he bound to offer any evidence of intention or even to state reasons which induced him to prosecute.<sup>5</sup>

In cases of non-payment of penalty under Chap. IV no question of intention arises and prosecution can be sanctioned whether or not the intention is made out.<sup>6</sup>

The question of intention, when it arises, is material only at the stage of giving a sanction to the prosecution. The Magistrate trying the offence need not go into the question as it is not made an ingredient of the offence by this section. He may, however, take it into account at the time of passing the sentence.<sup>7</sup>

#### Section 62—NOTE 4

1. ('70) 2 N W P H C R 188 (188), *Queen v. Adjdoodhya Pershad*. (Case under Act X of 1862.)

('87) 9 All 210 (212, 213): 1887 All W N 5, *Queen-Empress v. Rahat Ali Khan*. (Adhesive stamp on receipt not cancelled—Offence under S. 61 (2) of Act I of 1879 held committed—But as there was no sanction for the prosecution under S. 69 of that Act the conviction by the lower Court was set aside.)

Also see S. 70 Note 1.

1a. ('76) 1876 Pun Re (Cr.) No. 23 page 37 (40) (DB), *Crown v. Prem Singh*.

('82) 8 Cal 259 (262): 10 Cal L Rep 365 (DB), *Empress v. Soddanund Mohanty*.

2. ('82) 8 Cal 259 (262): 10 Cal L Rep 365 (DB), *Empress v. Soddanund Mohanty*.

('83) 7 Bom 82 (83) (DB), *Empress v. Janki*. Also see S. 43 Note 1 and S. 70 Note 1.

3. ('76) 1876 Pun Re (Cr.) No. 23 page 37 (40) (DB), *Crown v. Prem Singh*.

('33) 20 AIR 1933 Lah 959 (959): 146 Ind Cas 1055, *Maya Shah v. Emperor*.

('82) 8 Cal 259 (262): 10 Cal L Rep 365 (DB) *Empress v. Soddanund Mohanty*.

('83) 7 Bom 82 (83) (DB), *Empress v. Janki*.

('21) 8 AIR 1921 Pat 233 (234): 64 Ind Cas 286, *Namai Charan Sahu v. Emperor*. (Receipt not duly stamped—No opportunity to pay penalty given—Conviction set aside.)

Also see S. 43 Note 1.

4. ('84) 7 Mad 537 (539): 1 Weir 899 (DB), *Queen-Empress v. Palani*.

Also see S. 70 Note 1.

5. ('77) 2 Cal 399 (403) (FB), *Empress v. Dwarkanath Chowdhry*.

6. ('33) Mad S M, page 59 (59). (Citing, B P 3189, 17th November 1879.)

7. ('77) 2 Cal 399 (403) (FB), *Empress v. Dwarkanath Chowdhry*.



The Collector being primarily responsible for prosecutions for offences under this Act, should not himself, as a Magistrate, try the person accused of an offence under the Act.<sup>8</sup>

5. **"Person."**—The word "person" is not defined in this Act. The definition of the term in the General Clauses Act 1897 will, therefore, apply and the term "person" in this section will include any company, association or body of individuals whether incorporated or not.<sup>1</sup> It would, therefore, include members of a trading partnership.<sup>2</sup>

6. **Corporation.**—In the case of a corporation it is to be noted, firstly, that it can only act through its servants and agents and it is only through the acts and defaults of such persons that it can be made criminally liable<sup>1</sup> and, secondly, that, though it is included within the term "person," a corporation cannot have anything in the nature of *mens rea*. A corporation as such, therefore, cannot be guilty of any offence which involves guilty intention or knowledge on the part of the offender as an essential ingredient of it. But in cases of offences where the question of *mens rea* is immaterial, a corporation acting through its servants and agents can be held criminally responsible and liable for penalty.<sup>2</sup>

As seen in Note 2 the offences under this section belong to the latter category and therefore, a corporation can be convicted of an offence under this section.

In *Attorney-General v. Carlton Bank*<sup>3</sup> the manager or cashier of a Bank received money from a solicitor, also a servant of the company, and initialled the entries in a book kept for that purpose, in token of having received the money on behalf of the Bank. The entries were not stamped. It was held that the entries amounted to a receipt and the manager or the cashier, passing such a receipt without a stamp on behalf of the Bank, rendered the Bank liable for a penalty under S. 103 of the English Stamp Act of 1891.

7. **Liability of master for act of servant.**—Where a master *abets* the commission of an offence under this Act by his servant, the master will be guilty of such *abetment*. (See Note 3). But where there is no abetment by the master, but the offence is committed by the servant in the course of his employment, the question arises whether the master can be convicted of the offence.

Where the offence is one which requires a particular kind of guilty intent or knowledge, it is clear that the master cannot be held liable in this vicarious manner.<sup>1</sup>

But where the offence does not involve any guilty intent or knowledge as one of its ingredients, the master is held liable for the acts of his servants, in various cases.<sup>2</sup> The rule in such cases is said to be that the master will be held liable where

8. ('80) 2 All 806 (807), *Empress of India v. Deoki Nandanlal*.

('78) 3 Cal 622 (622); 2 Cal L Rep 179, *Empress v. Gangadhar Bhunjo*. (Officer instituting and conducting prosecutions under the Stamp Act should not also try them.) Also see S. 70 Note 1.

#### Section 62—NOTE 5

1. *Vide*, Section 3 (39) of the General Clauses Act (Act X of 1897).
2. (1900) 27 Cal 324 (333); 4 Cal W N 440 (DB), *Queen-Empress v. Khetter Mohun*. (Manager sending to customer unstamped receipt for sum exceeding Rs. 20—Partners convicted.)

#### Section 62—NOTE 6

1. Halsbury, *Laws of England*, Vol. 9, Para. 503, page 235.
2. (1902) 2 KB 1 (11): 71 LJ KB 656: 87 LT 51, *Pearks, Gunston & Tee Ltd. v. Ward*.
3. (1899) 2 QB 158 (166): 68 LJ QB 788: 81 LT 115: 47 WR (Eng) 650.

#### Section 62—NOTE 7

1. (1902) 2 KB 1 (11): 71 LJ KB 656: 87 LT 51, *Pearks, Gunston & Tee Ltd. v. Ward*.
2. Halsbury, *Laws of England* (1909), Vol., 9 Para. 502, page 235.



the statute would be rendered nugatory if a different construction is adopted.<sup>3</sup> In each case, the question as to the master's guilt is thus one of construction of the particular statute in question—construction with reference not merely to the language of the enactment but also its subject-matter and object.<sup>4</sup> Thus in cases under the Licensing Acts<sup>5</sup> and Acts for the protection of public health and sanitation<sup>6</sup> the master is generally held liable for the acts of his servants. Fiscal statutes are another example of the same category.<sup>7</sup> The same principle has been adopted in cases of public nuisance.<sup>8</sup>

In the light of the above, it would appear that offences under this Act which do not involve any guilty intention or knowledge as one of their ingredients—such as the offences under this section—can be charged against a person although the act has been done by his servant. Accordingly, it has been held that where a servant in the course of his employment gives an unstamped receipt for an amount exceeding Rs. 20 the master can be held guilty of an offence under this section.<sup>9</sup> A contrary view was, however, taken in the undermentioned case.<sup>10</sup> It is submitted that the decision is not correct.

**8. Clause (a)—Scope.**—This clause relates to bills of exchange payable otherwise than on demand and promissory notes, and forbids the drawing, making,

(1826) 108 E R 204 (207, 208) : 4 L J (O S) K B 309 : 29 R R 319, *Laugher v. Pointer*.  
(1895) 1 Q B 742 (746, 748) : 64 L J Q B 448 : 72 L T 448 : 43 W R (Eng) 440, *Dyer v. Munday*.

(1902) 2 K B 1 (11) : 71 L J K B 656 : 87 L T 51, *Pearks, Gunston & Tee Ltd. v. Ward*.  
[See also (1872) 7 C P 415 (420), *Bayley v. Manchester Sheffield and Lincolnshire Ry. Company*. (A person who puts another in his place to do a class of acts in his absence, necessarily leaves him to determine according to the circumstances that arise, when an act of that class is to be done, and trusts him for the manner in which it is done, and consequently he is held answerable for the wrong of the person so instructed either in the manner of doing such an act or doing such an act under circumstances in which it ought not to have been done; provided that what was done was done, not from any caprice of the servant, but in the course of the employment. Affirmed in (1873) 8 C P 148.)

(1861) 158 E R 148 (151) : 30 L J Ex 189 : 9 W R (Eng) 518 : 123 R R 563, *Seymour v. Greenwood*.

(1867) 15 W R (Eng) 877 (878) : 16 L T 461 : 2 Ex 259 : 36 L J Ex 147, *Barwick v. English Joint Stock Bank*.]

3. Broom's *Legal Maxims*, Tenth Edition (1939) page 211. (Citing *Farley v. Higginbotham*, (1898) 42 S J 309 and *Morris v. Carbett*, 56 J P 649.)

[See also (1830) 148 E R 1400 (1402) : 35 R R 701 : 9 L J Ex (O S) 7, *Attorney-General v. Siddon*. (Per Alexander, L. C. B.)]

4. ('07) 31 Bom 611 (627) : 9 Bom L R 967, *Emperor v. A. M. Jeevanji*.

See also Halsbury, *Laws of England* (1909), Vol. 20, Para 611, pages 258, 259.

5. ('12) 34 All 319 (321) : 14 Ind Cas 666 (DB), *Emperor v. Babulal*. (Case under the

Opium Act (Act I of 1878).)

(1900) 24 Bom 423 (426) : 2 Bom L R 52, *Queen-Empress v. Tyaballi*. (Case under the Indian Arms Act, 1878.)

(1874) 1 Q B 292 (295, 296) : 29 L T 838 : 22 W R (Eng) 297 : 43 L J M C 67, *Mullins v. Collins*. (Case under the Licensing Act, 1872, S. 16—Servant supplying liquor to a constable on duty without authority of his superior officer—*Mens rea* is not necessary—The master of the shop held liable.)

[See also (1891) 1 Q B 408 (412) : 64 L T 292 : 39 W R (Eng) 350 : 60 L J M C 95, *Budd v. Lucas*. (Case under the Merchandise Marks Act, 1887 (50 & 51 Vict., Ch. 28)—*Held*, there was nothing in the Act to make it an exception to the rule that a master is not criminally liable for the unauthorised acts of his servants—That certain Acts such as the Licensing Acts are exception to this rule but this Act is not of that kind.)]

6. ('12) 39 Cal 682 (685) : 14 Ind Cas 205 (DB), *Sew Karan v. Corporation of Calcutta*.

(1902) 2 K B 1 (9) : 71 L J K B 656 : 87 L T 51, *Pearks, Gunston & Tee Ltd. v. Ward*.

7. (1830) 148 E R 1400 (1402) : 35 R R 701 : 9 L J Ex (O S) 7, *Attorney-General v. Siddon*.

8. (1834) 172 E R 1246 (1250) : 6 C & P 292 (299), *Rex v. Medley*. (Chairman, Deputy chairman, Superintendent and Engineer of the works held guilty though they pleaded ignorance of the act.)

(1865) 1 Q B 702 (709) : 35 L J Q B 251 : 14 L T 593 : 14 W R (Eng) 859, *Rex v. Stephens*. [But see ('19) 6 AIR 1919 Cal 539 (540) : 46 Cal 515 : 47 Ind Cas 287 (DB), *Bhuban Ram v. Bibhuti Bhushan Biswas*.]

9. (1900) 27 Cal 324 (333) : 4 Cal W N 440 (DB), *Queen-Empress v. Khetter Mohun*.

10. ('04) 8 Cal W N 378 (380), *Golam Hossain Ariff v. Emperor*.



endorsing etc., of these instruments without their being duly stamped, under a penalty. Prior to the amendment of this clause by the Indian Finance Act, 1927, this clause included a cheque also, but the word "cheque" was omitted from this clause by that Act.<sup>1</sup> The same Act added the words "payable otherwise than on demand" after the words "any bill of exchange" in this clause.<sup>2</sup> Cheques and bills payable on demand are now not chargeable with any stamp duty, as a result of the above Act. The above-mentioned changes in this section were made consequent on this.

Bills of exchange and promissory notes not duly stamped cannot be admitted in evidence by the civil Court on payment of deficit duty and penalty under S. 35, nor can a Collector recover any duty and penalty in respect of them under Ss. 40 and 41. The person drawing, making, endorsing etc., such an instrument is liable to be prosecuted for an offence under this clause as soon as the fact is noticed by the Collector. The proviso to S. 43 does not apply to these cases and the inquiry into the *intention* of the offender is not necessary before the prosecution is started.

The Collector, however, is not bound to prosecute in every case in which he finds that a promissory note or a bill of exchange has not been duly stamped. There is nothing in the Act which compels the Collector to enforce the penalty under this section in each and every case.<sup>3</sup>

Under S. 3 (3) of the Indian (Specified Instruments) Stamp Act, 1924, the promissory notes payable on demand for an amount exceeding Rs. 250 and executed within the period of six months from the 30th September 1923, are deemed to be "duly stamped" for the purposes of this section, if they are stamped in such a manner that they would have been duly stamped for the purposes of this Act, as amended by the Indian Stamp (Amendment) Act of 1923; and no prosecution under this clause will lie in respect of such promissory notes. (See also Note 16.)

9. "Issuing."—"Issue" means the first delivery of a bill or note to a person who takes it as a first holder.<sup>1</sup> There is, therefore, no "issuing" of a bill or a note until it passes to the first holder for value.

10. "Accepting."—The term "accepting" in cl. (a) does not mean "receiving" only. It means "executing as an acceptor."<sup>1</sup> A person, therefore, who merely receives an unstamped promissory note and simply puts it in suit is not guilty of any offence under this section.<sup>2</sup> Nor is such a receiving an abetment of its execution.<sup>3</sup> (See Note 3.) Thus, if an instrument amounts to a promissory note or any

## Section 62—NOTE 8

1. *Vide*, S. 5 of Act V of 1927.
2. *Vide*, S. 5 of Act V of 1927.
3. Administrator-Gen. No. 92, dated 2nd October 1882; (*Vide*, G. R. No. 7569 dated 30th idem—Quoted in *The Stamp Law and Procedure* by S. B. Shahani, (1937) 1st Edition, page 158.)

## Section 62—NOTE 9

1. Bills of Exchange Act (1882) (45 & 46 Vict. Ch. 61, S. 2).  
[See also (1822) 106 E.R. 1337 (1339): 24 R.R. 522, *Downes v. Richardson*. (A bill is issued as soon as there is some person who can make a valid claim upon it; but if it remains in the hands of the original drawer, even with names upon it, under such circumstances as that, he cannot have any legal claim upon those persons, the

bill is not issued.)]

## Section 62—NOTE 10

1. \*('84) 7 Mad 71 (73): 1 Weir 902, *Queen-Empress v. Gulam Hussain*.  
(87) 1887 Pun Re (Cr.) No. 12 page 23 (24) (DB), *Empress v. Srikishan Das*.  
(91) 1891 Pun Re (Cr.) No. 11 page 35 (36), *Piari Lal v. Queen-Empress*.  
(98) 20 All 440 (442): 1898 All W.N. 108, *Queen-Empress v. Nihal Chand*.  
(03) 1903 All W.N. 174 (174), *Emperor v. Kallumal*.
2. ('84) 7 Mad 71 (73): 1 Weir 902, *Queen-Empress v. Gulam Hussain*.  
(98) 20 All 440 (442): 1898 All W.N. 108, *Queen-Empress v. Nihal Chand*.
3. ('98) 20 All 440 (442): 1898 All W.N. 108, *Queen-Empress v. Nihal Chand*.



instrument to which this clause relates, and it is not properly stamped, the person subject to a penalty under this section, is the person who makes it and not the person in whose favour it is made.<sup>4</sup>

**11. "Receiving the payment of."**—Under this clause a person who "pays" or "receives the payment" of a promissory note or a bill of exchange which is not duly stamped commits an offence. Receiving the payment of a promissory note means receiving actually *the money due under the note* and not receiving the note itself.<sup>1</sup>

**12. Clause (b)—Scope.**—This clause relates to all instruments chargeable with duty except a bill of exchange and a promissory note, which are dealt with by cl. (a). It thus includes the instruments chargeable with the duty of one anna and half an anna, in respect of which no duty and penalty under Chap. IV can be paid, and which are not, therefore, subject to the proviso to S. 43, requiring the proof of intention to evade the payment of duty before a prosecution under this clause is sanctioned. As seen in Note 4, all other instruments covered by this clause get the benefit of that proviso and no prosecution in respect of them can be sanctioned without first giving an opportunity to the party to pay duty and penalty under Chap. IV, and when it is paid, without a clear finding by the Collector that an intention to evade the payment of proper duty exists.

The offence under this clause and that under cl. (a) of S. 64 are not respectively a minor and major offence and it cannot be presumed that a sanction to prosecute an offence under S. 64 cl. (a) is by implication a sanction to a prosecution under this clause.<sup>1</sup>

**13. "Executing."**—As defined by S. 2 (12) the term "execute" used with reference to an instrument means "sign." (See Notes 3 and 4 on section 2 (12).)

The word "executing" used in this section must be taken to mean very much the same as "signing" and this signing must be such as would complete the document and give it a full legal effect.<sup>1</sup> Thus, in case of an award it is the signature of the arbitrator which completes the award and not the signature of the parties thereto. The arbitrator, therefore, is the person who *executes* the award and is liable under this section if it is not duly stamped. The parties, whose signatures are not even necessary to an award, are not liable under this section, even if they sign an unstamped award.<sup>2</sup>

4. ('75) 24 Suth W R (Cr.) 1 (2) (DB), *Queen v. Nadi Chand Poddar*.

Section 62—NOTE 11

1. ('03) 1903 All W N 174 (174), *Emperor v. Kallumal*.

Section 62—NOTE 12

1. ('33) 20 AIR 1933 Lah 959 (959) : 146 Ind Cas 1055, *Maya Shah v. Emperor*. Also see S. 64 Note 2.

Section 62—NOTE 13

1. ('10) 32 All 198 (200) : 5 Ind Cas 180, *Brijpal Saran v. Emperor*.

[See also ('68) 3 Mad HCR (App) 27 (29), *High Court Proceedings*, 15th February 1867. (The word 'sign' though susceptible undoubtedly of a wider meaning as an isolated word, must, in its present connexion, be narrowed to such signing as a constituent part of the making, executing or being a party to the particular deed.)

2. ('10) 32 All 198 (200) : 5 Ind Cas 180, *Brijpal Saran v. Emperor*.

('28) 15 AIR 1928 Nag 166 (169) : 107 Ind Cas 668, *Ram Kumar v. Kushal Chand Ganeshdas*. (Held, the executant of the award being the arbitrator under S. 29 (g) it was his duty primarily to direct any of the parties to provide him with necessary stamp and to see that he did not deliver or publish his award on a plain paper and thus save himself from the blame attaching to him of having evaded the Stamp-law.)

[But see ('24) 11 AIR 1924 Nag 204 (206, 207) : 78 Ind Cas 194, *Anantram v. Murlidhar*. (Obiter—It is needless to add that the law casts upon the arbitrator no obligation to stamp the award and he does not usually do so. So the award was complete though it was unstamped and therefore inadmissible in evidence.)]



14. “**Signing otherwise than as a witness.**”—Under this section, not only the persons who execute an instrument chargeable with duty but also those who *sign it otherwise than as a witness* are liable to prosecution, if they append their signatures to an instrument which is not duly stamped.<sup>1</sup> The expression “signing otherwise than as a witness” has been held to mean the writing of a person’s name by himself or by his authority, with the intention of authenticating a document as being that of the person whose name is so written. An ordinary agent authorised to sign on behalf of his principal falls within this description and consequently is liable under this section.<sup>2</sup>

Where an arbitrator signs an award directing a partition such award amounts, under S. 2 (15), to an instrument of partition and if it is not duly stamped, the arbitrator is liable to be prosecuted under this clause as a person “signing otherwise than as a witness.”<sup>3</sup>

But it is not every person who signs otherwise than as a witness that is liable to a prosecution under this section. There are certain exceptions to the rule. For instance, in the case noted below<sup>4</sup> certain persons referred their dispute to an arbitrator who duly made an award and published it. The award was signed by the arbitrator, by certain persons specifically as witnesses and by the persons who had referred the dispute to arbitration and who had admittedly signed the submission to the arbitration. The award was not stamped, but was acted upon by the parties, who produced it in Court and consequently were prosecuted for an offence under this clause as persons “signing it otherwise than as a witness.” The lower Court convicted them, but on revision the High Court set the conviction aside, observing as follows :

“It is impossible to say that every person who writes his name on a document of this nature otherwise than as a witness has committed an offence under the Act, because if that was so, even a Judge who signed the document as an exhibit would be liable to a fine. It is a pity no definition is given in the Act as to the meaning of the expression ‘signing otherwise than as a witness.’ Supposing that in the present case, the applicants had been no parties to the submission to arbitration and had signed the award as an agreement and, notwithstanding the fact that they were no parties to the submission, they intended to be bound by the award, I think that they might be said to have signed the award otherwise than as witnesses, within the meaning of this section. Again, if there had been some informality in the submission or in the arbitration proceedings and interested parties had signed as evidence of a waiver of the irregularity, they might perhaps be said to have signed otherwise than as witnesses. In the present case, however, it must be assumed that the submission, the arbitration proceedings and the award were all perfectly regular. If they were, the award bound the applicants just as effectually without their signatures, as with them. The document was complete when the arbitrator signed and published his award : and the only result of the signatures of the applicants was to avoid the necessity of proving perhaps at some remote date the regularity of the arbitration proceedings.”

#### Section 62—NOTE 14

1. ('24) 11 AIR 1924 Oudh 240 (240) : 73 Ind Cas 336, *Emperor v. Puttoolal*. (Where certain arbitrators signed unstamped instrument of partition held that they were liable to prosecution under S. 62 (b).)

2. (1900) 27 Cal 324 (332) : 4 Cal W N 440 (DB), *Queen-Empress v. Ketter Mohan*.

3. ('24) 11 AIR 1924 Oudh 240 (240) : 73 Ind Cas 336, *Emperor v. Puttoolal*.

4. ('10) 32 All 198 (200) : 5 Ind Cas 180, *Brij Pal Saran v. Emperor*.



The case of a scribe, that is a person who signs an instrument as a writer thereof is also an exception to the rule. The writing of a document under instructions is clearly not making of it by the writer<sup>5</sup> and hence, merely engrossing an instrument chargeable with duty on an unstamped paper is not an offence under this section.<sup>6</sup>

It is conceived that in order to make a person who is not the *executant* of the instrument liable under this section as a person signing the instrument, otherwise than as a witness, the signing must be for the purpose of being in some way bound by the instrument, as for instance, where a person signs an instrument of transfer for showing that he *consents* to the transfer.

A person who signs as a witness an instrument chargeable with duty has been excluded from the operation of the section and hence is not guilty of any offence if the instrument is not duly stamped.<sup>7</sup> As stated by the High Court of Madras in the undermentioned case<sup>8</sup> an instrument is complete without the signatures of the attesting witnesses, which properly speaking do not form any part of it. To hold otherwise would make it impossible for a person safely to attest the execution of a document without first satisfying himself that the parties have rightly calculated the value of the stamp.

15. "Instrument chargeable with duty."—No offence can be held as proved under this section unless it is shown that the instrument in question is "chargeable with duty."<sup>1</sup> For the meaning of this expression see S. 2 (6) and Note thereon. See also S. 3 and Notes thereon.

Where a mortgagee of land made a memorandum of the mortgage transaction in his account book in the presence of the witnesses and the entry did not purport to have been written at the instance or the authority of the mortgagor, the memorandum was held not to amount to a deed of mortgage or any other instrument chargeable with duty under this Act and therefore the prosecution of the mortgagee for not stamping the entry was held not warranted by the section.<sup>2</sup> Similarly, in case of a document which purported to be an agreement for a lease whereby no rent was reserved and no premium was paid or money advanced, it was held that the document did not require a stamp under any provision in the schedule and hence the executant of the document did not commit any offence under this clause in not stamping the same.<sup>3</sup>

Certain parties to a suit came to terms out of Court on certain conditions. The agreement was not reduced to writing but the parties presented a petition to the Court praying that a decree in the terms of the compromise might be passed in the case and they also stated the terms therein for the information of the Court. The decree was passed accordingly but the parties were prosecuted for an offence under this section for not stamping the agreement with a general stamp. It was held that the document was merely a petition to the Court informing it of an agreement into which the parties had orally entered out of Court and praying for a decree in

5. ('68) 3 Mad H C R (App) 27 (28, 29), *High Court Proceedings*, 15th February 1867.

6. (1863) 1 Bom H C R (Cr.) 37 (38) (DB), *Reg. v. Joti*.

('66) 2 Bom H C R (Cr.) 129 (129) (DB), *Reg. v. Jetha Moti*.

7. ('36) 23 AIR 1936 Lah 449 (452): 17 Lah 223: 162 I. C. 774 (SB), *Shams Din v. Collector, Amritsar*.

('66) 2 Bom H C R (Cr.) 129 (129) (DB), *Reg. v. Jetha Moti*.

8. ('68) 3 Mad H C R (App) 27 (28, 29), *High Court Proceedings*, 15th February, 1867.

#### Section 62—NOTE 15

1. ('83) 1883 Pun Re (Cr.) No. 31 page 78 (79) (DB), *Queen-Empress v. Mayamal*.

2. ('83) 1883 Pun Re (Cr.) No. 31 page 78 (79) (DB), *Queen-Empress v. Mayamal*.

3. ('16) 3 AIR 1916 Pat 250 (251): 1 Pat L Jour 366: 36 Ind Cas 175 (DB), *Sunder Koer v. Emperor*.

Also see S. 2 (16) Note 3 and Art. 35 Note 3



its terms. Hence, the document was held to require only the ordinary court-fee leviable for a petition and no stamp as an *agreement* and it was held that no offence was committed under this section.<sup>4</sup>

Where under the orders of his employer, a servant received some money from a co-servant for the purpose of paying it to his employer's creditor and wrote a document without a stamp by way of a voucher to show that he had taken the money as ordered by his employer, and handed the document to the co-servant, it was held that the document was simply a memorandum and did not amount to a receipt so as to require a stamp and that the person passing the same did not commit any offence under this clause.<sup>5</sup>

A witness in a criminal case filed a document in the Court acknowledging the receipt of Rs. 21 as his diet money and was prosecuted under this section for passing a receipt without a stamp. It was held that the document was not a receipt as it was not an acknowledgment of a payment by the payee made to the payer but to a third party, i.e., the Court and as such did not amount to an instrument chargeable with duty. The prosecution was held illegal.<sup>6</sup>

Instruments which are exempted from stamp duty by the provisions in the Act such as memoranda of agreements relating to sale of goods or merchandise<sup>7</sup> (Art. 5), or receipts for money without considerations<sup>8</sup> (Art. 53) are not "chargeable with any duty" and hence no prosecution lies for omission to stamp the same.

A receipt for an amount exceeding Rs. 20 is "an instrument chargeable with duty" within the meaning of this clause and a person executing the same without a proper stamp is guilty of an offence under this section.<sup>9</sup> A person who gives an

4. ('18) 5 AIR 1918 All 307 (308) : 40 All 19 : 42 Ind Cas 1008 (DB), *Ram Saran Lal v. Emperor*.

Also see Art. 5 Note 12.

5. ('17) 4 AIR 1917 Oudh 151 (151) : 42 Ind Cas 328, *Shadi Lal v. Emperor*.

Also see Art. 53 Note 4.

6. ('33) 20 AIR 1933 Oudh 51 (52) : 8 Luck 164 : 140 Ind Cas 192 (DB), *Emperor v. Mahipal Singh*.

Also see S. 2 (23) Note 4.

7. ('34) 21 AIR 1934 All 201 (203) : 56 All 680 : 150 Ind Cas 672 (DB), *Raghubar Dayal v. Emperor*. (Ornaments sold—Entry in purchaser's account book by seller giving description of goods and price paid—Entry held amounted not to conveyance but to memoranda of sale and receipt for price and exempt from duty so far as it was a memorandum of sale.)

('37) 24 AIR 1937 All 190 (192) : 162 Ind Cas 504, *Imam Bakhsh v. Emperor*. (Two documents by agent and purchaser respectively purporting to be receipts and bearing one anna stamp each—Purchaser agreeing to purchase new lorry and to sell his two old lorries to agent—Agent agreeing to set off price of old lorries—Balance agreed to be paid by instalments—Documents held were memoranda of agreement relating to sale of goods and fell under Art. 5, Exemption (a) and not under Art. 31 as exchange and hence parties not liable to be tried for an offence under S. 62.)

8. ('24) 11 AIR 1924 All 578 (578) : 46 All 354 : 81 Ind Cas 720, *Kanhailal v. Emperor*.

(Rupees 150 stolen from a person—Thief caught, tried and convicted—Magistrate returning the money to the person as part of the property recovered—Receipt for the same not stamped—Person tried and convicted under S. 62 (1) (b)—*Held* receipt being one for payment of money without consideration did not require to be stamped under Art. 53, Exemption (b)—Conviction set aside.)

[See also ('85) 1885 All W N 266 (267), *Empress v. Ashutosh*. (A taking a sub-lease of tolls of a bridge from B, an agent for C—In a suit by C, A producing unstamped receipts signed by D for B. D prosecuted under S. 61 of Act I of 1879 for passing unstamped receipts—D pleading receipts to be for money without consideration as A had given money to D to pay to B as D was B's next door neighbour—*Held* as A was instructed by B to pay money to D, and as this fact as well as the fact of sub-lease was known to D, D was acting as an agent of B in accepting money and the receipt was not one for money without consideration—D was convicted.)]

Also see Art. 53 Note 4.

9. ('85) 8 Mad 11 (13) : 1 Weir 902 (SB), *Reference under Stamp Act, S. 46*.

('88) 11 Mad 329 (330) : 1 Weir 903 (DB), *Queen-Empress v. Muttrilandi*. (A by a letter acknowledged the receipt of a cheque for Rs. 100 in these terms: 'Your cheque for Rs. 100 to hand'—The letter was not stamped—*Held*, A had committed an offence under S. 61 of Act I of 1879.)



unstamped receipt and refuses to give a stamped one even on a demand for the same commits two offences under Ss. 62 and 65 respectively, in respect of the same transaction.<sup>10</sup>

A *sarkhat* was written from time to time and was left in the hands of the debtor. It showed on one side sums of money advanced and on the opposite side, various sums repaid by the debtor. When the account was finally closed, a balance of Rs. 50 was paid and one receipt stamp was attached and signed by the creditor. It was held that the various items of receipt of over Rs. 20 amounted to an acknowledgment within the definition of the word "receipt" in S. 2 (23) and that the creditor was guilty of an offence under this clause in respect of each such entry by omitting to stamp it.<sup>11</sup>

See also the undermentioned case.<sup>12</sup>

**16. Instruments chargeable under Act XLIII of 1923.**—The Indian Stamp (Amendment) Act, XLIII of 1923, enhanced the stamp duty on instruments chargeable under Articles 19, 36, 37 and 52 and on promissory notes payable on demand. But for a certain period, even after the coming into force of this Act (which was on 1st October 1923), these instruments continued to be stamped at the old rate and much hardship was therefore experienced, to relieve which a subsequent Act, namely the Indian (Specified Instruments) Stamp Act, XIII of 1924, was passed. Under S. 3 of the latter Act, all the above instruments executed within the period of six months from 30th September 1923 and duly stamped under the Stamp Act prior to its amendment by Act XLIII of 1923, were declared to be "duly stamped" also for the purposes of cl. (b) of this section. By sub-s. (4) of S. 3 of Act XIII of 1924 a person from whom any sum had been recovered by way of penalty under this section in respect of the above instruments prior to the passing of that Act, was declared entitled to get a refund thereof.

**17. Duly stamped.**—See Notes on Section 2 (11).

**18. Receiving an unstamped instrument is no offence.**—Receiving an unstamped or insufficiently stamped instrument (in a case where it is chargeable with duty) executed in one's favour is neither executing an instrument nor signing it otherwise than as a witness. The person who receives such an instrument is, therefore, not liable to be prosecuted for any offence under this clause either as a principal offender or as an abettor. (See Note 3.) Persons like a donee under an unstamped deed of gift<sup>1</sup> or a creditor holding an insufficiently stamped bond<sup>2</sup> or a purchaser under a conveyance which is not duly stamped,<sup>3</sup> do not, therefore, commit any offence and are not liable to be prosecuted under this section.

('09) 31 All 36 (37): 1 Ind Cas 568 (DB), *Dungar Singh v. Emperor*. (Decree for rent—Payment out of Court under the decree to the agent of the landlord—Agent passing unstamped receipt—Prosecution of agent under S. 62—Contention that receipt for rent is exempt from duty under Art. 53 (c)—*Held*, debt of rent merged in decree and payment under decree required a stamped receipt.)

('33) Mad S M, page 59 (59). (Citing, B. P. No. 3872, 14th November 1884.)

10. ('33) 20 AIR 1933 Bom 462 (463): 146 Ind Cas 807 (DB), *Girdhardas v. Emperor*. Also see S. 30 Note 3 and S. 65 Note 2.

11. ('13) 35 All 290 (291): 20 Ind Cas 216, *Tulshiram v. Emperor*.

12. ('18) 5 AIR 1918 Cal 495 (496): 40 Ind Cas 725 (DB), *Rajeswar Bagchi v. Emperor*.

(Proposal for loan in a prescribed form of a Bank—Approval by the manager with recommendation of a particular rate of interest—Loan granted and a separate bond executed—The manager prosecuted under S. 62 (1) (b) for signing an agreement as to interest without a stamp—*Held*, the proposal with the endorsement by the manager amounted only to negotiations leading to the execution of the bond and that no stamp was necessary.)

Section 62—NOTE 18

1. ('71) 6 Mad H C R (App) 5 (5): 1 Weir 900, *High Court Proceedings*, 28th November 1870.

2. ('80) 1880 Pun Re (Cr.) No. 40 page 95 (96) (DB), *Empress v. Murad Ali*.

3. (1907) 77 L J K B 55 (59): 97 L T 814, *Inland Revenue Commissioners v. Maple and*



**19. Clause (c)—Proxy.**—A proxy is an instrument chargeable with duty under Art. 52 and as such a person executing it without duly stamping it would render himself liable to a prosecution for an offence under cl. (b) of this section.

Clause (c) of the section makes the use of an unstamped or insufficiently stamped proxy penal by making it an offence to vote or to attempt to vote under such a proxy.

**20. Proviso.**—The proviso to this section requires that where, prior to the institution of a prosecution under this section any penalty under S. 35, S. 40 or S. 61 has been recovered from the accused in respect of the same instrument, the amount of such penalty should be allowed in reduction of the fine, if any, imposed under this section.

The criminal Court trying an offence under this section cannot, however, realise the penalty previously imposed by the Collector under Chapter IV.<sup>1</sup>

**21. Sub-section (2).**—The provision in this sub-section was originally borrowed *verbatim* from S. 127 of the English Stamp Act, 1870, (33 & 34 Vic. Ch. 97) as sub-s. (2) of S. 35 of the Indian Companies Act, 1882, which was as follows :

“If a share warrant is issued without being duly stamped, the Company issuing the same and also every person who, at the time when it is issued, is the Managing Director, or Secretary, or other principal officer of the Company, shall forfeit the sum of Rs. 500.”

In 1899, the above provision was transferred to this Act as sub-s. (2) of this section. It corresponds to S. 107 of the English Stamp Act, 1891, (54 & 55 Vic., Ch. 39).

In *Queen-Empress v. Moore*<sup>1</sup> a question arose under the above S. 35 (2) of the Indian Companies Act, 1882, as to whether a Magistrate had jurisdiction to try an offence under that section as the word “forfeit” suggested a civil process, and secondly, whether under the wording of that section, a Magistrate could impose a lesser forfeit than Rs. 500. It was held that the word “forfeit” only meant “penalty” to be imposed for the offence under the section and hence the Magistrate had jurisdiction to try the case, and that the wording of the section being imperative the Magistrate had no discretion to impose a lesser forfeit than Rs. 500 for each share warrant issued without proper stamp.

In view of the objections and the decision in the above case, the last words of that section, namely, “shall forfeit the sum of Rs. 500” were changed into “shall be punishable with fine which may extend to five hundred rupees” when it was transferred to this Act as sub-s. (2) to this section. This sub-section, as it stands, clearly allows an option to the Magistrate to impose a lesser fine, if he thinks it fit to do so.

**22. “Shall be punishable.”**—The expression “shall be punishable” has been substituted in this and other sections in this chapter for the expression “shall be punished” used in the corresponding sections in Act I of 1879. This change, however, is merely verbal and does not imply that a Magistrate trying an offence under this chapter has any discretion as to imposing a sentence when the accused has been proved guilty. The offences under the Stamp Act are tried as summons cases and if the Magistrate finds an accused guilty, S. 245 (2) of the Criminal Procedure Code, 1898, requires that the Magistrate “shall pass sentence upon him according to law”.

Section 62—NOTE 20

*Co. (Paris) Ltd. (Reversing Maple & Co. (Paris) Ltd. v. Commissioners of Inland Revenue (1906) 2 K B 834.)*

1. ('97) 10 C P L R 1 (6), *Empress v. Bansidhur Deoria*.

Section 62—NOTE 21

1. ('93) 20 Cal 676 (681) (DB).



Though a Magistrate is bound to pass sentence when he finds the accused guilty the amount of fine to be imposed is left entirely to his discretion. The mere fact that a prosecution has been instituted does not bind him in any way so far as the amount of penalty is concerned.<sup>1</sup> The Magistrate may also take into consideration the absence of any intention to evade duty on the part of the accused in passing the sentence, though the question of intention is not material under the terms of the section to establish the offence.<sup>2</sup> (See Note 2.)

A person was tried under this section and fined Rs. 40 by the lower Court. It was held that as the proper duty in respect of the instrument in question was a matter about which genuine doubts could be entertained, the fine should be reduced to Rs. 10 only.<sup>3</sup>

**23. Ignorance of law.**—Ignorance of law on the part of the accused does not render him immune from conviction under this section, although it can undoubtedly be taken into account in passing sentence.<sup>1</sup>

**24. "Fine."**—The marginal notes to the sections defining criminal offences under the Act use the word "penalty" while the sections themselves speak of "fine" to be imposed as sentence. Generally speaking "penalty" is that which is demanded for the violation of a statute which may or may not be a crime. A "fine" is, on the other hand, always a punishment for the commission of a crime.<sup>1</sup> Sections 35, 40 and 41 in Chap. IV use the word "penalty" in this sense and the provision for recovery of the same is made by S. 48, which does not apply to the recovery of the "fine" imposed under Chap. VII. By virtue of S. 25 of the General Clauses Act, 1897, such fines are recoverable under the provisions of the Criminal Procedure Code, 1898.

In its strict sense, however, the term "penalty" is found to be generic in its character including both "fine" and "forfeiture."<sup>2</sup> See also the undermentioned case in which "forfeit" was held to mean "penalty" to be imposed for an offence.<sup>3</sup> The word "penalty" in the marginal notes must be taken to be used in this sense.

**25. Imprisonment in default of fine.**—The offence under this section being punishable with fine only S. 67 of the Indian Penal Code, 1860, does not authorise a sentence of *rigorous* imprisonment to be passed in default of payment of fine.<sup>1</sup> Such imprisonment can only be simple.

See also section 25 of the General Clauses Act, 1897.

#### Section 62—NOTE 22

1. ('77) 2 Cal 399 (403, 404) (FB), *Queen-Empress v. Dwarkanath Chowdhry*.
2. ('34) 21 AIR 1934 All 201 (203) : 56 All 680 : 150 Ind Cas 672 (DB), *Raghubar Dayal v. Emperor*.
- ('77) 2 Cal 399 (403) (FB), *Queen-Empress v. Dwarkanath Chowdhry*. (A Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person prosecuted under S. 29 of Act XVIII of 1869 had any intention to defraud by evading the payment of stamp duty.)
3. ('33) 20 AIR 1933 Oudh 461 (461) : 146 Ind Cas 559, *Emperor v. Ahmad Zaman Khan*.

#### Section 62—NOTE 23

1. ('34) 21 AIR 1934 All 201 (203) : 56 All 680 : 150 Ind Cas 672 (DB), *Raghubar Dayal v. Emperor*.

#### Section 62—NOTE 24

1. P. Ramanatha Iyer, *Law Lexicon of British India*, 1940 Edition, page 961.
2. P. Ramanatha Iyer, *Law Lexicon of British India*, 1940 Edition, page 961.
3. ('93) 20 Cal 676 (681) (DB), *Queen-Empress v. Moore*. (Case under S. 35 (2) of the Indian Companies Act 1882.)

#### Section 62—NOTE 25

1. ('80) 1880 Pun Re (Cr.) No. 40 page 94 (95) (DB), *Queen-Empress v. Murad Ali*. ('98) 20 All 440 (441) : 1898 All WN 108, *Queen-Empress v. Nihalchand*.



## Provincial Amendment.

## Section 62A.

## BOMBAY

After section 62 the following section shall be *inserted*, namely :—

**\*62A.** Any person who in a clearance list makes a declaration which is false or which he either knows or believes to be false, shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.”

—*Bombay Finance (Amendment) Act, 1949 (Bom. Act II of 1949), S. 7 (2) 1-4-1949.*

**\*63.** Any person required by section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

**1. Scope of the section.**—The failure to cancel an adhesive stamp is made punishable, under this section, with a fine not exceeding Rs. 100. Under this section, the question of intention to defraud the Government does not arise, as it does in the case of offences punishable under Ss. 64, 65 (b) and S. 68. An accused may be convicted both under this section as well as under S. 62.<sup>1</sup>

For an offence under this section, the case must be one in which a person is required by S. 12 to cancel an adhesive stamp. Thus, where a person executes a receipt for a sum exceeding Rs. 20 and asks another to stamp it and the latter affixes the proper adhesive stamp to the receipt but fails to cancel the stamp, no offence is committed under this section. The reason is that S. 12 does not apply to such a case. The case being one where a stamp is affixed to a document already executed, the first paragraph of S. 12 is the relevant portion of that section, if at all that section can be considered to apply. But that paragraph applies only to cases where stamping is *permissible under the law* after the execution of the document. A receipt not being such a document, the above paragraph does not apply and hence, the cancelling of the stamp cannot be said to be *required* under S. 12. The offence committed in such a case is really one under S. 62 (1) (b).<sup>2</sup>

Where a prosecution under this section has been sanctioned by the Collector under S. 70 but the facts found at the trial disclose an offence under S. 62 and not under this section the accused cannot be convicted under S. 62 on the basis of the same sanction.<sup>3</sup>

Penalty for omission to comply with provisions of Section 27.

**†64.** Any person who, with intent to defraud the Government,—

- (a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth ; or
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances ; or

\*[1879 S. 62 ; 1869—Ss. 31, 33 ; 1862—Ss. 8, 11 ; 1860 Ss. 6, 9. Cf. (1870) 33 & 34 Vict., C. 97—S. 24 (2) ; (1891) 54 & 55 Vict., C. 39—S. 8 (3).]

†[1879—S. 63 ; 1869—Ss. 34 (c), 35 ; 1862—S. 51 ; 1860—Ss. 35, 36. Cf. (1870) 33 & 34 Vict., C. 97—S. 10 ; (1891) 54 & 55 Vict., C. 39—S. 5.]

## Section 63—NOTE 1

- 1. ('13) 35 All 290 (291) : 20 Ind Cas 216, *Emperor v. Tulshi Ram*.
- 2. ('87) 9 All 210 (212, 213) : 1887 All W N

- 5, *Queen-Empress v. Rahat Ali Khan*. (Government Official sending receipt attached to salary bill—Stamp on receipt not cancelled.)
- 3. ('87) 9 All 210 (212, 213) : 1887 All W N
- 5, *Queen-Empress v. Rahat Ali Khan*.



(c) does any other act calculated to deprive the Government of any duty or penalty under this Act ;  
shall be punishable with fine which may extend to five thousand rupees.

#### RELEVANT REFERENCES TO OTHER ACTS.

#### BENGAL

Attention is invited to sub-s. (3) of S. 82 of the Calcutta Improvement Act, 1911 (Beng. Act V of 1911). The text of S. 82 of the said Act is given in Appendix J.

#### CENTRAL PROVINCES

Attention is invited to sub-s. (3) of S. 77 of the Nagpur Improvement Trust Act, 1936 (C. P. Act XXXVI of 1936), and to S. 4 of the City of Jubbulpore (Improvement Duty) Act, 1948 (C. P. and Berar Act LVIII of 1949). The text of these sections is given in Appendix J.

#### MADRAS

Attention is invited to S. 136 of the Madras City Municipal Act, 1919 (Mad. Act IV of 1919), to S. 116B of the Madras District Municipalities Act, 1920 (Mad. Act V of 1920) and to S. 110B of the Madras Local Boards Act, 1920 (Mad. Act XIV of 1920). The Text of these sections is given in Appendix J.

#### UNITED PROVINCES

Attention is invited to sub-s. (4) of S. 67-H of the United Provinces Town Improvement Act, 1919 (U. P. Act VIII of 1919). The text of S. 67-H of the said Act is given in Appendix J.

#### SYNOPSIS

##### 1. Intention to defraud,

##### 2. Clause (a)

##### 3. Clause (b).

##### 4. Clause (c).

##### 5. Document contravening Section 27—Collector's power to determine consideration, etc.

##### 6. Collector whether must proceed under Ss. 40 and 43 before sanctioning prosecution under this section.

1. **Intention to defraud.**—An intent to defraud is an essential ingredient of the offence under this section.<sup>1</sup> Mere non-payment of the proper stamp duty does not make a person liable to prosecution under this section;<sup>2</sup> and proof of an intention to defraud Government of its stamp revenue is necessary for a conviction under this section.<sup>3</sup>

2. **Clause (a).**—This clause applies to the executant of an instrument who commits a breach of the provisions of S. 27. A person executing a sale-deed in which the consideration is shown as Rs. 1000 only while the real consideration is Rs. 20,000 is guilty of an offence under this clause.<sup>1</sup> Similarly, the executant of a partition-deed in which the value of the property is grossly undervalued commits an offence under this clause.<sup>2</sup> So also where an instrument is silent regarding the consideration or it does not set forth the circumstances from which it could be

#### Section 64—NOTE 1

1. ('89) 12 Mad 231 (233, 234) : 1 Weir 903 (DB), *Queen-Empress v. Venkatrayadu*.

2. ('18) 5 AIR 1918 Cal 113 (113) : 45 Ind Cas 275 (DB), *Brojendra Nath Bakshi v. Emperor*.

('28) 108 Ind Cas 427 (429, 430) (Pat), *Rang Lal Sahu v. Emperor*.

3. ('40) 27 AIR 1940 Lah 274 (274) : 189 Ind Cas 343, *Ram Chand v. Emperor*. (Intent can only be inferred from circumstances. Mere fact that a document which is really a settlement is described therein and registered as a will is not sufficient to prove intent to defraud.)

('33) 20 AIR 1933 Lah 959 (959, 960) : 146 Ind Cas 1055, *Maya Shah v. Emperor*.

('37) 1937 Mad W N 1071 (1072), *Narasimha*

*Iyer v. Tahsildar of Wallajah, North Arkot*. (The complaint stated that the accused purchased a certain property which was worth about Rs. 5000 in 1932 for Rs. 3325. The same property was reconveyed by the accused to his former vendors for Rs. 1,000 in 1936—Held that the complaint as drafted did not disclose an offence under S. 64 (a).)

('28) 108 Ind Cas 427 (429) (Pat), *Rang Lal Sahu v. Emperor*.

('18) 5 AIR 1918 Cal 113 (113) : 45 Ind Cas 275 (DB), *Brojendra Nath Bakshi v. Emperor*.

#### Section 64—NOTE 2

1. ('10) 32 All 171 (175) : 5 Ind Cas 697 (DB), *Emperor v. Rameshar Das*.

2. ('89) 12 Mad 231 (233, 234) : 1 Weir 903 (DB), *Queen-Empress v. Venkatrayadu*.



gathered how much stamp duty is to be paid, a prosecution under this section is the only remedy for breach of S. 27.<sup>3</sup> But the mere fact that a person sells his property for less than what it is worth is not an offence under cl. (a).<sup>4</sup>

This clause applies only to the person who executes the document and hence a person in whose favour a document is executed, e.g., the purchaser in a sale-deed, cannot be convicted under this clause.<sup>5</sup>

The offences under S. 62 (b) and S. 64 (a) are not respectively minor and major offences and it cannot be presumed that a sanction to a prosecution under S. 64 (a) is a sanction by implication to a prosecution under section 62 (b).<sup>6</sup>

**3. Clause (b).**—This clause applies to a person who is employed or concerned in or about the preparation of a deed without complying with the requirements of S. 27. The clause is not restricted to the scribe of the instrument but is wide enough to reach and punish the person who is in truth the author of the deed and is responsible for it though he writes the deed through the hand of another person.<sup>1</sup> A person who is the moving spirit in the matter of sale and who is the real purchaser though the deed is nominally taken in the name of another, and who engineers the whole thing and arranges for the wording of the sale-deed, is a person concerned in or about the preparation of the instrument.<sup>2</sup>

The words “with intent to defraud the Government” govern this clause also and hence a scribe who scribes the deed without any knowledge of the fraud does not commit an offence under this clause.<sup>3</sup>

**4. Clause (c).**—There is a conflict of decisions as to the meaning of the words “any other act” in this clause. In *Chhagmal Chopra v. Emperor*<sup>1</sup> the Calcutta High Court held that the words “any other act” in this clause mean an *act of a like nature* to those which are specified in cls. (a) and (b) of the section. In this case a debtor had signed a writing in the creditor's account books undertaking to pay interest. The entry was stamped with a one anna stamp. When the writing was produced in evidence it was held to be an agreement and not properly stamped; the creditor was prosecuted for committing an offence under S. 64 (c) by putting a stamp on the instrument which he knew was not of proper value. The High Court held that

3. ('45) 32 AIR 1945 Lah 69 (75) ILR (1946) Lah 185 (SB), *Miran Bakhsh v. Emperor*. (The Collector has no power to take any evidence to find out the consideration.)

4. ('37) 1937 Mad W N 1071 (1072), *Narasimha Iyer, v. Tahsildar of Wallajah, North Arkot*.

5. ('29) 16 AIR 1929 Cal 723 (724) : 124 Ind Cas 524, *Panchanan Roy v. Emperor*.

6. ('33) 20 AIR 1933 Lah 959 (959, 960) : 146 Ind Cas 1055, *Maya Shah v. Emperor*. (Complaint under S. 64 (a)—Before accused can be convicted under S. 62 (b), he must be given opportunity of defence under S. 62 (b).) Also see S. 62 Note 12.

#### Section 64—NOTE 3

1. ('44) 31 AIR 1944 Sind 222 (224, 225) : ILR (1944) Kar 246 : 218 Ind Cas 15 (DB), *Chimandas v. Emperor*. (A purchased a land for Rs. 800 from B. Eight days later he reconveyed the land to B. In the second sale-deed the consideration was falsely stated to be Rs. 400. The actual consideration being Rs. 800. C a stamp vendor was the person who advised the parties to do so and got the sale-deed prepared. The actual

scribe was a different person—*Held, C* could be convicted under S. 64 (b).)

('37) 24 AIR 1937 Nag 57 (58) : ILR (1937) Nag 432 : 166 Ind Cas 681, *In re Trimbak Madhao*

[But see ('90) 1 Weir 905 (906) (DB), *In re Sengoda Goundan*. (The language of the clause appears to point to the case of a person in whom trust and confidence have been reposed in connexion with the preparation, writing etc. of an instrument and who abuses such trust and confidence, e.g. an attorney's clerk, or professional writer and not to the case of a person materially interested or concerned in the instrument when executed such as a purchaser or grantee.)]

2. ('37) 24 AIR 1937 Nag 57 (58) : ILR (1937) Nag 432 : 166 Ind Cas 681, *In re Trimbak Madhao*.

3. ('29) 16 AIR 1929 Cal 723 (724) : 124 Ind Cas 524, *Panchanan Roy v. Emperor*.

#### Section 64—NOTE 4

1. ('17) 4 AIR 1917 Cal 665 (666) : 44 Cal 321 : 36 Ind Cas 146 (DB).



the mere fact that a person puts a stamp on the document which he knows is not of proper value does not bring his case within S. 64 (c).

In *Chaganlal v. Emperor*<sup>2</sup> the Judicial Commissioner's Court, Nagpur, dissented from the view of the Calcutta High Court and held that cl. (c) need not be construed *ejusdem generis* with the other clauses of this section. In this case it was proved that it was the practice of the creditor who was prosecuted under S. 64 (c) to secure the loans by means of a *ruju* and a *chitti*. It was proved that the creditor had a large stock of printed *chittis* and it was he who prescribed this method. It was held that the *ruju* and the *chitti* together constituted a *bond* and the creditor was guilty of an offence under S. 64 (c).

In *Emperor v. Kallumal*<sup>3</sup> the Allahabad High Court held that the essential ingredients of an offence under S. 64 (c) are that there was an intent to defraud the Government and that with such intent *some* act was done which was calculated to deprive the Government of stamp duty. In this case Kallumal who was an illiterate money-lender and cloth merchant kept a register in which his customers used to make entries regarding the loans taken or purchases made and also of the payments made. One customer owed Rs. 90-2-0 and paid the sum and caused an entry to be made of the payment in the register. No receipt was demanded by the customer. It was held that the entry was not made by Kallumal and as no receipt was demanded, Kallumal cannot be said to have done an act with intent to deprive Government of stamp duty.

It is submitted that the Calcutta view seems to be the correct view as the residuary and general provision relating to stamp offences committed with the intention of defrauding the Government of its revenue seems to be contained in S. 68 (c). The marginal note to this section also supports this view.

**5. Document contravening Section 27—Collector's power to determine consideration, etc.**—Where the amount of consideration or the value of the property on the basis of which the duty is payable is not stated or is wrongly stated in the deed, the Collector has no power to hold an inquiry and determine the amount of consideration or value of property with a view to levy the proper stamp duty. The only remedy in such a case, if the contravention of S. 27 is due to an intent to defraud the Government of revenue, is to prosecute the person under this section.<sup>4</sup>

**6. Collector whether must proceed under Sections 40 and 43 before sanctioning prosecution under this section.**—Where the consideration of an instrument is wrongly stated or the property in the instrument is undervalued, the document on the face of it is duly stamped and hence the Collector cannot levy any penalty in respect of it. A conviction under S. 64 is, therefore, not illegal because the Collector has not followed the procedure under Ss. 40 and 43 before sanctioning prosecution under this section.<sup>1</sup>

2. ('34) 21 AIR 1934 Nag 261 (262, 263) : 31 Nag L R 108 : 153 Ind Cas 952.

3. ('03) 1903 All W N 173 (174).

#### Section 64—NOTE 5

1. ('45) 32 AIR 1945 Lah 69 (75) ILR (1946) Lah 185 (SB), *Miran Bakhsh v. Emperor* (A document was executed as a power of attorney. The Collector held that it was also a mortgage and as it did not specify the amount secured, he took evidence and determined the amount secured and the duty payable on it—*Held*, since the document did not state the consideration no stamp duty could be levied as a mortgage.)

(22) 9 AIR 1922 All 82 (83) : 44 All 339 : 65 Ind Cas 811 (FB), *In re Muhammad Muzaffar Ali*. (A deed of gift which contains no

statement of the value of the property thereby conveyed, does not require any stamp under the Stamp Act and a Collector is not authorised to ascertain the value of the property with a view to causing the instrument to be stamped with reference to the value thus ascertained.)

[See also ('97) 20 Mad 27 (28, 29) : 7 Mad L Jour 30, *Velu Goundan v. Kumara Velu Goundan*. (Remarks of Board of Revenue.) Also see S. 27 Note 2 ; S. 40 Note 2 : Art. 23 Note 5 and Art. 33 Note 5.

#### Section 64—NOTE 6

1. ('89) 12 Mad 231 (233, 234) : 1 Weir 903 (DB), *Queen-Empress v. Venkatrayadu*. ('10) 32 All 171 (175) : 5 Ind Cas 697 (DB), *Emperor v. Rameshardas*.



Penalty for refusal  
to give receipt, and  
for devices to evade  
duty on receipt.

\*65. Any person who,—

- (a) being required under section 30 to give a receipt, refuses or neglects to give the same : or
- (b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered ;
- shall be punishable with fine which may extend to one hundred rupees.

### SYNOPSIS

1. Clause (a).
2. Section 62 and Section 65 (a).
3. Clause (b).

4. "Shall be punishable."
5. "Person."

1. **Clause (a).**—Under this clause, refusal or neglect to give a receipt required under S. 30 is made punishable. Section 30 provides that any person receiving any money exceeding twenty rupees or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any movable property exceeding twenty rupees shall, *on demand* by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt. Thus, the obligation to give a receipt arises only on demand for the same by the payer.<sup>1</sup> Hence in order to bring home the charge under this clause, it must be proved that there was a demand by the payer for a receipt. Strict proof of this requisition is quite as essential to conviction as proof of the refusal (or neglect).<sup>2</sup>

Further, the demand must be by the person who pays the money, in other words, by the person from whose pocket the money comes and who has the right to demand the receipt and not by an intermediary who actually pays the money to the payee. If there is no demand from the person from whose pocket the money was paid, the refusal of the payee to give a receipt is not an offence under this clause.<sup>3</sup>

"Receipt" is defined in S. 2 (23) of this Act. To constitute a receipt there must be an acknowledgment either express or implied of the receipt and not a mere statement that certain money was received by a certain other person.<sup>4</sup>

A certificate given by a witness to the Court certifying receipt of a particular sum from one of the parties is not a receipt as it is not an acknowledgment made to the payer.<sup>5</sup>

\*[1879—S. 64 ; 1869—S. 27 (b) ; 1862—S. 29 ; 1860—S. 15. Cf. (1870) 33 & 34 Vict., C. 97—S. 123 ; (1891) 54 & 55 Vict., C. 39—S. 103.]

#### Section 65—NOTE 1

1. ('03) 1903 All W N 173 (174), *Emperor v. Kallumal*.
- ('84) 1884 All W N 164 (164), *Empress v. Bansidhar*.
2. (1900) 27 Cal 324 (332) : 4 Cal W N 440 (DB), *Queen-Empress v. Khetter Mohun Chaudhry*.
3. ('33) 20 A I R 1933 Bom 462 (464) : 146 Ind Cas 807 (DB), *Girdhardas Liladhar v. Emperor*.
- ('33) 20 AIR 1933 Oudh 51 (51, 52) : 8 Luck

164 : 140 Ind Cas 192, *Emperor v. Mahipal Singh*.

Also see S. 30 Note 4.

4. ('99) 23 Bom 54 (56), *In re Jamnadas Hari Naran*. (Failure to stamp an instrument which is mere memorandum and not receipt is not an offence.)

Also see S. 2 (23) Note 4.

5. ('33) 20 A I R 1933 Oudh 51 (52) : 8 Luck 164 : 140 Ind Cas 192, *Emperor v. Mahipal Singh*.

Also see S. 2 (23) Note 4.



Section 30 has no application to a case where *immovable* property exceeding Rs. 20 in value is made over by a debtor to a creditor in satisfaction of a pre-existing liability. In such a case the creditor is not bound under S. 30 to pass any receipt to the debtor and his refusal to pass a receipt will not amount to an offence under this clause.<sup>6</sup>

Although a receipt for rent of an agricultural holding is exempt from payment of stamp duty under Art. 53 (c), a receipt for payment out of Court of money due under a decree for such rent is not so exempt and a refusal to give a properly stamped receipt for the same will amount to an offence under this clause.<sup>7</sup>

Where money is remitted by postal money order and the payee has signed the receipt in duplicate on the post office form (such receipt is exempt from duty under Rules made under S. 9) he cannot be legally compelled to give a further stamped receipt to the payer and his refusal to give such a stamped receipt on demand by the payer will not amount to an offence under this clause.<sup>8</sup>

The knowledge of the accused is not an element of the offence under this clause. Thus, where a letter declining to give a stamped receipt when demanded was written by a writer of a firm who had signed the firm's name under the authority of the firm, it was held that the members of the firm were guilty under this clause as their liability depended not on whether they were present at the writing of the letter, or knew of the writing of it, but on their being, in contemplation of law, the persons who signed the letter of refusal to give receipt.<sup>9</sup> (See also S. 62, Note 7.)

**2. Section 62 and Section 65 (a).**—The special offences created by Ss. 30 and 65 do not interfere with the general provisions of S. 62 and do not alter the fact that an unstamped receipt is an instrument chargeable with duty and not duly stamped within the meaning of S. 62.<sup>1</sup>

The offence under S. 65 consists in not giving a properly stamped receipt when demanded; the offence under S. 62 (1) (b) consists in passing a receipt unstamped whether one is demanded by the payer or not. Hence, where a person gives an unstamped receipt and refuses to give a stamped one even after demand for the same, he commits two offences, one under S. 62 and another under S. 65 in respect of the same transaction.<sup>2</sup>

**3. Clause (b).**—Intention to defraud is not an element of the offence under cl. (a), but it is so under cl. (b). The object of this clause is to punish the practice, often resorted to, of dividing money exceeding Rs. 20 into separate amounts less than Rs. 20 each and passing separate receipts for them so as to evade stamp duty.

**4. "Shall be punishable."**—A prosecution for an offence under this section cannot be instituted except with the previous sanction of the Collector under S. 70. An initiation of prosecution without the sanction of the Collector being first obtained

6. ('32) 19 AIR 1932 Nag 172 (172): 28 Nag L R 216: 140 Ind Cas 397, *Emperor v. Sukhdeo*.

Also see S. 2 (23) Note 16 and S. 30 Note 7.

7. ('09) 31 All 36 (37): 1 Ind Cas 568 (DB), *Emperor v. Dungar Singh*.

8. ('12) 34 All 192 (196): 13 Ind Cas 778 (DB), *Balmakund v. Emperor*.

9. (1900) 27 Cal 324 (331, 333): 4 Cal W N 440 (DB), *Queen-Empress v. Khetter Mohun Chowdhry*.

[But see ('04) 8 Cal W N 378 (380), *Golam Hussain Ariff v. Emperor*.

#### Section 65—NOTE 2

1. ('85) 8 Mad 11 (12): 1 Weir 902 (SB), *Reference under Stamp Act, S. 46*.

('88) 11 Mad 329 (330): 1 Weir 903 (DB), *Queen-Empress v. Muttirulandi*.

2. ('33) 20 AIR 1933 Bom 462 (463): 146 Ind Cas 807 (DB), *Girdhardas v. Emperor*.

Also see S. 30 Note 3 and S. 62 Note 15.



is fatal to the prosecution and to the conviction obtained on such prosecution.<sup>1</sup>  
The subsequent according of the sanction cannot validate the proceedings.<sup>2</sup>

5. "Person."—The term "person" in this section includes the members of a trading partnership. (See General Clauses Act, 1897, section 3 (39).)<sup>1</sup>

Penalty for not making out policy, or making one not duly stamped.

**\*66. Any person who—**

(a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance ; or

(b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy;

shall be punishable with fine which may extend to two hundred rupees.

1. Scope of the section.—This section creates a special offence in respect of insurance policies. It does not, however, interfere with the general provision contained in S. 62 (1) (b) and it would be no answer to a prosecution started under the latter section to say that an offence under the special provision in the former has not been committed.<sup>1</sup>

† 67. Any person drawing or executing a bill of exchange <sup>a</sup>[payable otherwise than on demand] or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

a. Inserted by S. 5 of the Indian Finance Act, 1927 (V of 1927).

1. Scope of the section.—This section creates special offence in respect of bills of exchange payable otherwise than on demand and policies of marine insurance

\*[1879—S. 65. Cf. (1870) 33 & 34 Vict., C. 97—S. 118 ; (1891) 54 & 55 Vict., C. 39—Ss. 97, 100.]

†[1879—S. 66 ; 1869—S. 32 ; 1862—Ss. 12, 25 ; 1860—S. 10.]

**Section 65—NOTE 4**

1. ('85) 9 Bom 27 (28). *Queen-Empress v. Jethmal Jeyraj*.

('15) 2 AIR 1915 Lah 241 (241) : 1915 Pun Re No. (Cr) 21 : 31 Ind Cas 643, *Emperor v. Ramji Lal*.

Also see S. 70 Note 1.

2. ('27) 14 AIR 1927 Nag 202 (202, 203) : 104 Ind Cas 108, *Ramjiwan Marwari v. Lohimi*.

Also see S. 70 Note 1.

**Section 65—NOTE 5**

(1900) 27 Cal 324 (333) : 4 Cal W N 440

(DB), *Queen-Empress v. Khettar Mohun Chowdhry*.

**Section 66—NOTE 1**

1. See ('85) 8 Mad 11 (12) : 1 Weir 902 (SB). *Reference under Stamp Act, S. 46*. (Case under S. 64 of Act I of 1879—Obiter remarks in the Board's order of reference : "Sections 65 and 66 create special offences in respect of insurance policies, but if a Collector ordered a prosecution under Section 61 in the case of an insurance policy not duly stamped, it would be no defence to urge that the offences contemplated by Sections 65 and 66 had not been committed.")



purporting to be drawn or executed in a set of two or more. It does not, however, interfere with the general provisions contained in S. 62 sub-s. (1), cls. (a) and (b) and it would be no answer to a prosecution started under S. 62 that an offence under the special provisions of this section has not been committed.<sup>1</sup>

The section is enacted to prevent loss of revenue to Government as under Art. 13 cl. (b) and Art. 47 Division A stamp duty is payable on each part where the instrument is drawn or executed in a set.

**2. Bills of exchange payable on demand.**—The words “payable otherwise than on demand” were inserted after the words “bill of exchange” by S. 5 of the Indian Finance Act (V of 1927). By the very section stamp duty chargeable in respect of a bill of exchange payable on demand under Art. 13 was abolished. Before this amendment a bill of exchange payable on demand was chargeable with a stamp duty of one anna under that article. Under the article provision for stamp duty in respect of bills of exchange drawn in sets was made only in the case of bills of exchange payable otherwise than on demand not more than one year after date or sight. Bills of exchange payable on demand could, however, be drawn in sets like bills of exchange payable otherwise than on demand and the question was whether a second of exchange payable on demand drawn on a paper not duly stamped violated the provisions of this section as the section in terms was applicable to all bills of exchange. It was held in the undermentioned case<sup>1</sup> that in such a case the whole set constituted only one bill of exchange and therefore when the first of exchange was stamped with a stamp of one anna, the second of exchange did not require any stamp and therefore could not be said to be not drawn or executed on paper duly stamped.

**3. Policy of marine insurance.**—The penalty imposed by the section for not drawing or executing on paper duly stamped, the whole number of a set of policies of marine insurance implies that each part of the set is chargeable with stamp duty. In Art. 47 as enacted in 1899, however, there was no provision for stamping sea insurance in sets. Division A of Art. 47 as it now stands was substituted for the original Division A by S. 7 of the amending Act V of 1906. Sets of insurance policies, however, seem to differ radically from sets of bills of exchange. In Art. 47 Division A as amended by Act V of 1906 the heading of the last column is “if drawn in duplicate, for each part” and not “if drawn in set of two (or three), for each part of the set” as in Art. 13 (b). Stamp duty is provided for the duplicate of any instrument chargeable with duty in Art. 25. It would thus appear that before the amendment of 1906, the second part of a set of marine policies was chargeable under Art. 25, as a duplicate and the amendment of 1906 was made to lighten the duty so chargeable.<sup>1</sup>

**4. Policies of life insurance.**—Division D of Art. 47 provides for stamp duty on duplicates of policies of life insurance and other insurance not specifically provided for. These policies are, however, not included in this section. Therefore,

#### Section 67—NOTE 1

1. See ('85) 8 Mad 11 (12): 1 Weir 902 (SB), *Reference under Stamp Act*, S. 46. (Case under S. 64 of Act I of 1879—Obiter remarks in the Board's order of reference: “Sections 65 and 66 create special offences in respect of insurance policies, but if a Collector ordered a prosecution under S. 61 in the case of an insurance policy not duly stamped, it

would be no defence to urge that the offences contemplated by Sections 65 and 66 had not been committed.”)

#### Section 67—NOTE 2

1. ('08) 4 Low Bur Rul 320 (323) (FB), *In re Netherlands Trading Society*.

#### Section 67—NOTE 3

1. ('08) 4 Low Bur Rul 320 (323) (FB), *In re Netherlands Trading Society*.



a person not drawing or executing on paper duly stamped the whole number of policies in such a case would not be liable to a penalty under this section. But he would be committing an offence under S. 62 (1) (b) if he draws up a policy on unstamped paper.

Penalty for post-dating bills, and for other devices to defraud the revenue.

**\*68. Any person who—**

- (a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill of note is actually drawn or made ; or
- (b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same ; or
- (c) with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force;

shall be punishable with fine which may extend to one thousand rupees.

1. Scope of the section.—Clauses (a) and (b) of this section impose penalties in certain cases of post-dating of bills of exchange and promissory notes. Clause (c) is a general and residuary provision for the punishment of frauds on stamp revenue not otherwise specially provided for.

In order to sustain a prosecution under this section, it is essential to prove an intention to defraud the Government of duty.<sup>1</sup>

The fact that a bill of exchange or promissory note was post-dated is not admissible in evidence for the purpose of determining the duty payable on the instrument, such duty being payable on the document as it runs. Hence a post-dated bill of exchange or promissory note is chargeable with duty as if it were executed on the date which it bears.<sup>2</sup> But if the instrument is post-dated for the purpose of evading stamp duty, an offence would be committed under this section.

The word "cheque" is not expressly mentioned in cl. (a). The omission indicates an intention on the part of the Legislature that post-dating of *cheques* should not be subject to penalty, although "cheque" is defined in S. 2 (7) as meaning "a bill of exchange drawn on a specified banker," etc. (See also Notes on S. 2 (7).)

2. Clause (c).—Clause (c) is not controlled by cl. (a) or cl. (b) of this section, which refer only to bills of exchange or promissory notes ; it applies to all cases not

\*[1879—S. 67 ; 1862—S. 13 ; 1860—S. 11.]

Section 68—NOTE 1

- 1. ('89) 16 Cal 432 (435) (DB), *Ramen Chetty v. Mahomed Ghose*.
- 2. ('89) 16 Cal 432 (435) (DB), *Ramen Chetty v. Mahomed Ghose*.
- ('25) 12 AIR 1925 Bom 527 (528) : 90 Ind Cas 685 (DB), *Ramparsad Shivalal v. Shrinivas*

*Balmukand.*  
 (1877) 25 W R (Eng) 305 (306) : 46 L J Q B 605 : 36 L T 182 : 2 Ex D 265, *Gatty v. Fry*.  
 (1894) 2 Q B 715 (718, 719) : 64 L J Q B 99 : 71 L T 168 : 43 W R (Eng) 22, *Royal Bank of Scotland v. Tottenham*.  
 (1871) 6 Q B 209 (212, 213) : 40 L J Q B 141 : 24 L T 130, *Bull v. O'Sullivan*.



provided for by this Act or any other law in which a fraud is practised on the Stamp-law.<sup>1</sup>

The execution of a document requiring stamp, without seeing that it is stamped, is not a "device or contrivance" but may be an "act" within the meaning of this section.<sup>2</sup> But even as an "act," it cannot be said to be one "not specially provided for by this Act." The "act" of the executant of such an instrument is punishable under S. 62 and cannot, therefore, fall under this section.

Thus, in the undermentioned case,<sup>3</sup> the petitioner was the recipient of a letter which requested that a loan might be granted to a certain person and stated that when this was done, the writer would be responsible for the amount of the loan, if the borrower did not repay it. Both the writer and the petitioner were prosecuted under S. 67 (corresponding to this section) of the Act of 1879. As far as the petitioner was concerned, the ground was that when the loan was granted, the letter became a letter of guarantee and therefore liable to stamp duty as an indemnity bond. It was held that the act of the executant, if punishable, was provided for under S. 61 (now S. 62) of the Act of 1879, and could not, therefore, fall under S. 67 (now this section). The act of the petitioner amounted to the abetment of an offence which abetment was punishable under the Penal Code and was therefore "an act provided for by any other law for the time being in force," and equally not within the terms of section 67.

As seen in Note 1, the intent to defraud the Government of duty is an essential ingredient of the offence under this section. So, the act, contrivance or device, referred to in this clause, must of itself be either improper or prohibited.<sup>4</sup> The mere fact that the effect of executing an instrument without a stamp is to deprive the Government of duty is not by itself sufficient to infer the fraudulent intent.<sup>5</sup> The Court must have proof of facts sufficient to justify it in coming to the conclusion that the intention existed.<sup>5a</sup> So also, it is open to the parties to split up a transaction and have two or more separate instruments so as to lessen the amount of stamps.<sup>6</sup> So long as the letter of the law is adhered to, the Court cannot object to any apparent evasion of the stamp duty, which results from such splitting up, and infer a fraudulent intent.<sup>6a</sup> (See also Preamble, Notes 26 and 34.)

#### *Illustrative cases.*

A sued B on three bonds for Rs. 49 each, aggregating Rs. 147. The three bonds were executed on the same date on stamps of As. 4 each. It was held that the fact

#### Section 68—NOTE 2

1. ('86) 9 Mad 138 (139) (SB), *Reference under Stamp Act, S. 46.*

2. ('38) 25 AIR 1938 Bom 87 (88): ILR (1938) Bom 114:173 Ind Cas 13 (DB), *Emperor v. Ramchandra Raoji.*

[See also (1900) 23 Mad 155 (158): 1 Weir 907, *Queen-Empress v. Somasundaram Chetti.* (There can be no device or contrivance if the document is what on its face it purports to be.)]

3. (1900) 23 Mad 155 (158): 1 Weir 907 (DB), *Queen-Empress v. Somasundaram Chetti.*

4. ('33) Mad S M, p. 62. (Citing, B Ps 3940, 18th November 1884 and 3376, 14th December 1885.)

5. ('38) 25 AIR 1938 Bom 87 (88): ILR (1938) Bom 114:173 Ind Cas 13 (DB), *Emperor v. Ramchandra Raoji.*

5a. ('38) 25 AIR 1938 Bom 87 (88): ILR

(1938) Bom 114:173 Ind Cas 13 (DB) *Emperor v. Ramchandra Raoji.*

6. (1848) 175 E R 340 (342): 11 L T (OS) 456, *Hankins v. Clutterbuck.* (If parties choose to divide their contracts, so as to lessen the amount of stamps, they may equally do so. If a party so acted as not to be hit by the Stamp Act, he had a right to do so.)

6a. ('66) 1866 Pun Re (Sm C C R) No. 5 page 4 (4).

[See (1889) 23 Q B D 579 (593): 61 L T 832: 38 W R (Eng) 3, *Commissioners of Inland Revenue v. Angus.* (The Crown, however, must make out its right to the duty, and if there be a means of evading the stamp duty, so much the better for those who can evade it; it is no fraud upon the Crown, it is a thing which they are perfectly entitled to do.)]

Also see Preamble Note 34.



that one bond for Rs. 147 on a rupee stamp could have been executed, was not sufficient to infer a fraudulent intention.<sup>7</sup>

A money-lender was sought to be prosecuted under this section in respect of certain unstamped entries in the borrower's *khata* with the money-lender. It was held that in the absence of any other evidence, the intention to defraud the Government could not be inferred, simply because the effect of these entries was to deprive the Government of duty.<sup>8</sup>

See also the undermentioned case.<sup>9</sup>

Section 64 (c) is also worded in a manner which is similar to this sub-section. But in the context of S. 64, cl. (c) of that section appears to relate to cases analogous to those mentioned in S. 64 cls. (a) and (b) and hence, that provision would be a "special" provision in relation to this sub-section. (See Note 4 on S. 64 on this point.)

Penalty for breach of rule relating to sale of stamps and for unauthorised sale. \*69. (a) Any person appointed to sell stamps who disobeys any rule made under section 74 ; and

(b) any person not so appointed who sells or offers for sale any stamp (other than a one-anna <sup>a</sup>[or half an anna] adhesive stamp);

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

a. Inserted by S. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

#### Provincial Amendments.

BOMBAY In clause (b) of section 69 before the words "one anna" insert the words "two annas."—*Bombay Act II of 1932, Pt. IV, S. 15 (2).* [1-4-1932.]

SIND Same as that of Bombay.—*Sind Act I of 1938, S. 2.* [31-3-1938.]

1. **Abetment.**—An abetment of the offences mentioned in this section is itself an offence under S. 109 of the Penal Code.<sup>1</sup> Thus, where a licensed vendor of stamps purchases from a private person any stamp other than a one anna or half an

\*[1879—S. 68 ; 1869—S. 48, Para. 3 ; 1862—S. 48 ; 1860—S. 31.]

7. ('66) 1866 Pun Re (Sm CCR) No. 5 page 4 (4).

8. ('38) 25 AIR 1938 Bom 87 (88); ILR 1938 Bom 114 : 173 Ind Cas 13 (DB), *Emperor v. Ramchandra Raoji*.

9. ('18) 5 AIR 1918 Cal 495 (497) : 40 Ind Cas 725 (DB), *Rajeswar Bagchi v. Emperor*. (Proposal for loan in prescribed form of Bank, guaranteeing payment in column of the form—Approval thereof by manager—Secretary of Bank issuing the loan—Secretary prosecuted under this section on the ground that his offer to make payment, accepted by manager, was a device intended to avoid a properly executed bond, and thus implying on the part of all an intention to defraud Government of duty—Held that secretary

did not share or take any part in the transaction with intent to defraud—His duties in connexion with the transaction were purely ministerial.)

#### Section 69—NOTE 1

1. ('33) Mad S M, p. 63. (Citing, B P 2366 R., Mis., 14th October 1902.) [See ('29) 16 AIR 1929 Sind 118 (119) : 118 Ind Cas 206 (DB), *Nenumal v. Emperor*. (Admission of a person, who is not a licensed vendor that he, at the request of licensed vendor, made endorsement and entries in sale register in respect of stamps sold by the latter is not sufficient evidence to hold that he abetted the offence of a breach of R.11, framed under S. 74, within the meaning of S. 107, Penal Code.)]



anna stamp, the licensed vendor abets an offence under cl. (b) of this section and such abetment is an offence.<sup>2</sup>

2. “Stamp.”—The word “Stamp” includes cancelled stamp also.<sup>1</sup> This section would, therefore, apply to sale of cancelled stamps also.

Certificates of pleaders, mukhtears and revenue agents are liable to stamp duty not under this Act but under the Legal Practitioner's Act and the stamp required therefor is a special kind of stamp which is not a “Stamp” within the meaning of the Stamp Act. This section does not apply to the sale of such stamps.<sup>2</sup>

3. Clause (b)—Sale of stamps by private persons.—The object of this Clause is to prohibit sale of stamps by persons other than those appointed for the purpose. Such sales are punishable even where they are made in good faith. A sale by an unauthorized person is none the less an offence under this clause because the stamp was purchased by him *bona fide* for his own use and finding subsequently that it was no longer of any use to him, he sold it.<sup>1</sup>

Where stamps are exchanged for money the transaction is a sale. It is not necessary that the vendor should be capable of passing a legal title to the vendee. Thus, an exchange of stolen stamps by a thief for money constitutes a sale.<sup>2</sup>

Where A gave stamps to B, who was in immediate need of them and who promised to give in return stamps of the same value, it was held that the transaction did not amount to a sale within the meaning of this section.<sup>3</sup>

There is no provision of law which prevents the use of a stamp by a person who has purchased it through another, though the name of the person who paid the money to the vendor, alone appears on the stamp.<sup>4</sup>

\*70. (1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as [the collecting Government] generally, or the Collector specially, authorises in that behalf.

\*[1879—S. 69 ; 1869—S. 43 ; 1862—S. 52 ; 1860—S. 37.]

2. ('33) Mad S M, page 63. (Citing, B P 2366 R., Mis. 14th October 1902.)

#### Section 69—NOTE 2

1. (1914) 1 K B 144 (146) : 83 L J K B 114 : 109 L T 832, *R. v. Lowden*. (Section 13 of the Stamp Duties Management Act, 1891, enacts that a person who “knowingly sells or exposes for sale or utters or uses any forged stamp” shall be guilty of felony—*Held* that a person who sells a forged postage stamp commits an offence against S. 13, notwithstanding that the stamp when sold bears a cancellation mark.)

2. ('31) Beng S M, Vol. 1, p. 56. (Citing, Board's Proceedings No. 268, dated the 12th July 1902, Collection No. 13, file No. 231 of 1902.)

('40) Bihar S M, p. 143. (*Vide* Government Order No. 671, T. F., dated the 10th June 1902.)

#### Section 69—NOTE 3

1. ('31) Beng S M, Vol. I, p. 56. (Citing, Board's Proceedings Nos. 372-373, dated the 4th February 1888.)

('40) Bihar S M, p. 142. (Citing, Board's Proceedings Nos. 372-373, dated 4th February 1888.)

2. ('01) 24 Mad 319 (321) : 1 Weir 725, *Queen-Empress v. Virasami*.

3. ('03) 30 Cal 921 (922) : 7 Cal W N 704, *Kedar Nath Shaha v. Emperor*. (A mukhtear buying a court-fee stamp for his client transferred it to another client in immediate need—The latter promising to return another stamp of the same value—*Held*, there was no sale.)

4. ('33) Mad S M, p. 63. (Citing, B P 247/ 1459 R., Mis., 22nd October 1909.)



(2) The Chief Controlling Revenue-authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48.

a. Substituted for the words "the Local Government" by A. O.

### Notification.

All functions of the Central Government under, or in relation to, S. 70 have been entrusted to Provincial Government.—See Government of India, Finance Department (Central Revenues) Notification No. 9, dated 13-11-1937.

### RELEVANT REFERENCE TO OTHER ACT.

#### N.-W.F.P.

The reference to the Chief Controlling Revenue-authority is to be construed as referring to the Revenue Commissioner.—See S. 6 (1) (d) of the North-West Frontier Law and Justice Regulation, 1901 (VII of 1901).

**1. Sub-section (1).**—This sub-section provides that a prosecution in respect of offences punishable under the Stamp Act can only be instituted with the sanction of the Collector. It is thus the Collector upon whom lies the initiative of instituting the prosecution and it is not within the competence of private individuals to start the criminal law in motion in respect of offences under the Stamp-law.<sup>1</sup>

The *jurisdiction* of a Magistrate to try an offence under the Stamp Act depends upon the sanction of the Collector being first obtained to the institution of the prosecution.<sup>2</sup> The want of such sanction is not a mere irregularity and a conviction obtained in a prosecution started without such sanction is bad in law.<sup>3</sup> The subsequent according of the sanction cannot validate the prosecution and the defect is not curable by S. 537 of the Criminal Procedure Code.<sup>4</sup>

It is essential that the record of the conviction should evidence such sanction. If it does not contain any written sanction, or any note of sanction having been given to the prosecution, the conviction will be set aside on the ground of the trial being without jurisdiction.<sup>5</sup>

The Collector is not required to make a formal inquiry or to record a proceeding when he gives the sanction.<sup>6</sup>

The effect of Ss. 40 and 43 is that every one must be given an opportunity of paying the penalty before the Collector exercises his discretion under this section,<sup>7</sup>

#### Section 70—NOTE 1

1. ('27) 14 AIR 1927 Nag 202 (203): 104 Ind Cas 108, *Ramjiwan Marwari v. Lohimi*.
2. ('15) 2 AIR 1915 Lah 241 (241): 1915 Pun Re (Cr) No. 21: 31 Ind Cas 643, *Emperor v. Ramjilal*.
3. ('83) 1883 All W N 98 (98), *Empress v. Deo Sahai*.  
(70) 2 N W P H C R 188 (188), *The Queen v. Adjoodhya Pershad*.  
(87) 9 All 210 (213): 1887 All W N 5, *Queen-Empress v. Rahat Alikhan*.  
Also see S. 62 Note 4.
4. ('27) 14 AIR 1927 Nag 202 (202): 104

Ind Cas 108, *Ramjiwan Marwari v. Lohimi*.  
[See also ('10) 37 Cal 467 (492): 7 I. C. 359, *Barindra Kumar v. Emperor*. (Case under I.P.C., S. 121.)]

Also see S. 65 Note 4.

5. ('85) 9 Bom 27 (28) (DB), *Queen-Empress v. Jethmal Jeyraj*.

Also see S. 65 Note 4.

6. ('84) 7 Mad 537 (539): 1 Weir 899 (DB), *Queen-Empress v. Palani*.

Also see S. 62 Note 4.

7. ('83) 7 Bom 82 (83), *Empress v. Janki*.  
[See also ('84) 10 Cal 1100 (1102) (DB), *Abbilakh Sing v. Khub Lal*.]

Also see S. 43 Note 1 and S. 62 Note 4.



and where penalty is paid, the prosecution can be sanctioned only if it appears to the Collector that the offence has been committed with the intention of evading stamp duty.

It is a familiar rule that the same person should not be both Judge and prosecutor. Hence the Collector who has instituted the prosecution should not himself try, as a Magistrate, a person accused of an offence against the Stamp-law. The case should, in such a case, be detailed for hearing and disposal to some other qualified Magistrate.<sup>8</sup>

Where the Collector has sanctioned a prosecution for an offence under S. 63, the accused cannot be convicted under S. 62 on the-basis of the same sanction.<sup>9</sup>

Under S. 52 of Act X of 1862, the provision was that the prosecution must be commenced by the Collector. Accordingly it was held that a mere sanction of prosecution by the Collector without a *complaint* from him was not sufficient.<sup>10</sup> The case is no longer good law.

2. Sub-section (2).—In the Punjab, the Chief Controlling Revenue-authority has authorized all Collectors generally to stay any prosecution or compound any offence arising under Ss. 63, 65 and 69 (a). (Financial Commissioner's Notification No. 116, dated 19th May 1910).<sup>1</sup>

In Bihar and Orissa District Officers are authorized by the Board to withdraw any prosecution instituted by them in respect of an offence under the Stamp-law, and to compound such offence, if they are of opinion that there is sufficient and reasonable cause for so doing.<sup>2</sup>

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**\*71.** No Magistrate other than a Presidency Magistrate or a Magistrate whose Jurisdiction of powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

1. Scope of the section.—A District Magistrate will have jurisdiction under this section to try an offence under this Act. But where he has himself directed the prosecution in his capacity as Collector, he cannot try the case.<sup>1</sup> See S. 556 of the Criminal Procedure Code. See also Note 1 on section 70.

According to one of the administrative instructions in the Punjab, cases of offences under the Stamp Act are important and should ordinarily be tried by stipendiary Magistrates familiar with the stamp rules, etc.<sup>2</sup>

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\*[1879—S. 70 ; 1869—S. 44 ; 1862—S. 53 ; 1860—Ss. 38, 39.]

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8. ('75) 24 Suth W R (Cr) 1 (2) (DB), *Queen v. Nadichand Poddar*.

('80) 2 All 806 (807), *Empress of India v. Deoki Nandan Lal*.

('78) 3 Cal 622 (622) : 2 Cal L Rep 179 (DB), *Empress v. Gangadhar Bhunjo*.

[See also ('83) 1883 All W N 98 (98), *Empress v. Deo Sahai*. (Prosecution should not be conducted by the officer who sanctioned it.)] Also see S. 62 Note 4.

9. ('87) 9 All 210 (212, 213) : 1887 All W N 5,

*Queen-Empress v. Rahat Alikhan*.

10. ('69) 5 Bom H C R (Cr) 48 (49) (DB), *Reg. v. Bai Divali*.

Section 70—NOTE 2

1. ('34) Punjab S M, Notes on Stamp Act, Chap 3, page 21.

2. ('40) Bihar S M, page 298.

Section 71—NOTE 1

1. ('75) 24 Suth W R (Cr) 1 (2) (DB), *Queen v. Nadi Chand Poddar*.

2. ('34) Punjab S M, Part I-B Chap 3, page 21.



2. **Power to grant rewards on conviction.**—Under Rule 22 of the Indian Stamp Rules, on the conviction of any offender under the Act, the Collector may grant to any person who appears to him to have contributed to the conviction a reward not exceeding such sum as the Provincial Government may fix in this behalf.<sup>1</sup> The limits fixed by the Madras and Punjab Governments are as stated below.<sup>2</sup>

\*72. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found as well as in any district or presidency-town in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

### CHAPTER VIII.

#### SUPPLEMENTAL PROVISIONS

\*\*73. Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.

#### Provincial Amendment.

UNITED PROVINCES In S. 73 for the words "any person" substitute the following words "any officer whose duty it is to see that proper duty is paid or any other person."—*U. P. Act XVIII of 1938, S. 5 [13-2-1939.]*

Powers to make rules relating to sale of stamps.

†74. The <sup>a</sup>[collecting Government] <sup>b</sup>[\*\*\*] may make rules for regulating—

- (a) the supply and sale of stamps and stamped papers,
- (b) the persons by whom alone such sale is to be conducted, and
- (c) the duties and remuneration of such persons :

Provided that such rules shall not restrict the sale of one-anna <sup>c</sup>[for half an anna] adhesive stamps.

- a. Substituted for the words "Local Government" by A. O.
- b. Words "subject to the control of the Governor-General in Council" were omitted by A. O.
- c. Inserted in S. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

\*[1879—S. 71.]

\*\*[Cf. (1870) 33 & 34 Vict., C. 97—S. 21 (1) ; (1891) 54 & 55 Vict., C. 39—S. 16.]

†[1879—S. 55 ; 1869—S. 48, Para. 1 ; 1862—S. 36 ; 1860—S. 19.]

#### Section 71—NOTE 2

1. ('33) Mad S M, page 63. (Citing, Government of India Notification No. C-63 Stamps, 25, Finance Department (C. R.) 5th May 1925, rule 22.)

('33) Mad S M, page 63. (Citing, G. O. 907, J. D., 9th May 1881 ; B. P. 1141, 23rd June 1881 ; G. O. 1159, Revenue, dated 4th June 1932 ; B. P. No. 170, Mis., dated 10th June 1932—The Government of Madras have authorized all Magistrates of the first class to grant rewards not exceeding Rs. 100 and the Board of Revenue to grant rewards

not exceeding Rs. 1,000 to any person who may have contributed to a conviction for an offence under Ch. VII of the Act. Should a reward for a larger amount than Rs. 1,000 be, in any case, called for, the previous sanction of Government should be obtained.) ('34) Punjab S M, Part 1-B Ch 2, page 9. (The sum of reward fixed in Punjab is Rs. 50 (Punjab Govt. No. 1501, dated 24th August 1882). Any Magistrate trying an offender should, if he thinks the grant of a reward necessary, refer the matter for the orders of the Collector.)



## Provincial Amendments.

**BOMBAY** In the proviso to S. 74 before the words "one anna" insert the words "two annas."—*Bombay Act II of 1932, Pt. IV, S. 15 (2).* [1-4-1932.]

**SIND** Same as that of Bombay.—*Sind Act I of 1938, S. 2.* [31-3-1938.]

## Notification.

All functions of the Central Government under, or in relation, to, S. 74 have been entrusted to Provincial Government.—*See Government of India, Finance Department (Central Revenues) Notification No. 9, dated 13-11-1937.*

1. **Scope of the section.**—This section provides for rules being made for the sale of stamps and stamp papers. An infringement by a stamp-vendor, of any of these rules is an offence under S. 69.<sup>1</sup> But such infringement will not make the instrument not duly stamped.<sup>2</sup>

The proviso requires that there should be no restriction as to the persons by whom one anna and half an anna stamps can be sold. Under S. 69, sale of stamps by a person not authorised to sell stamps is an offence except in the case of one anna and half an anna stamps.

**\*75.** The <sup>a</sup>[collecting Government] may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.

a. Substituted for the words "Governor-General in Council" by A. O.

## Notification.

All functions of the Central Government under, or in relation to, S. 75 have been entrusted to Provincial Government.—*See Government of India, Finance Department (Central Revenues) Notification No. 9, dated 13-11-1937.*

1. **Power to make Rules.**—In addition to the rule-making power conferred on the collecting Government for special objects by Ss. 10, 18, 37, 49 and 74 this section invests such Government with a power to make rules to carry out generally the purposes of the Act and to provide penalties for the breach of such rules. Besides

\*[1879—S. 56.]

## Section 74—NOTE 1

1. See ('29) 16 AIR 1929 Sind 118 (119): 118 Ind Cas 206, *Nenumal v. Emperor*. (Breach of rule requiring vendor to make entries in his own handwriting—Abetment—*Held*, in this case there was no abetment.)
2. ('91) 18 Cal 39 (42) (SB), *Queen-Empress v. Trailakya Nath Baral*. (Failure by vendor to certify that the number of stamps used

was the smallest possible—Document held duly stamped.) ('88) 11 Mad 377 (378) (SB), *Reference under Stamp Act, S. 46*. (The omission of a stamp vendor to endorse on a stamp paper the particulars required by a rule published under Ss. 55 and 57 of the Stamp Act of 1879 by Government of Madras does not render a stamp "not duly stamped" within the meaning of S. 3 (10) of that Act.)



the above mentioned rules, the Government can also grant remissions and reductions of duty under S. 9 and also declare the rates of exchange under S. 20.

2. **Rules whether can be declared ultra vires.**—In section 56 of the Act of 1879 corresponding to this section, the words “consistent herewith” occurred after the word “rules.” A Court could, therefore, determine whether a rule was inconsistent with the Act and therefore *ultra vires*.<sup>1</sup> Thus, the High Court of Madras declared *ultra vires* a rule which required parties and witnesses to attest the part of an instrument which was written on plain sheets of paper attached to the stamped paper.<sup>2</sup> In the undermentioned cases<sup>3</sup> a question was raised whether a rule requiring an instrument to be written on the side of the paper which bore the stamp was *ultra vires* as being more stringent than and, therefore, inconsistent with the Act. The question, however, was not decided.

The words “consistent herewith” have been omitted in the present section. Moreover, in S. 76 the words “have effect as if enacted by this Act” have been substituted for the words “have the force of law” which occurred in S. 56. In view of these changes it will not be open to question any rules promulgated by the proper authority under this section on the ground of its being inconsistent with the Act.<sup>4</sup>

Publication of rules. \*76. <sup>a</sup>[(1) All rules made under this Act shall be published in the official Gazette.]

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

a. The sub-section was substituted for the original sub-section by A.O.

1. **Ultra vires.**—As to the power of Courts to question the rules under this Act as being *ultra vires*, see Note 2 on section 75.

<sup>a</sup>76A. <sup>b</sup>[The Central Government, subject to the provisions of section 124 Delegation of (1) of the Government of India Act, 1935, and the Provincial certain powers. Government, may by notification in the official Gazette] delegate—

(a) all or any of the powers conferred on it by sections 2 (9), 33 (3) (b), 70 (1), 74 and 78 to the Chief Controlling Revenue-authority; and

(b) all or any of the powers conferred on the Chief Controlling Revenue-authority by sections 45 (1) (2), 56 (1) and 70 (2) to such subordinate Revenue-authority as may be specified in the notification.

a. The section was inserted by Part I of the Schedule to the Decentralisation Act, 1914 (IV of 1914).

b. Substituted for the words “the Local Government may, by notification in the Local Official Gazette” by A. O.

\*[1879—S. 57, Para. 2 ; 1869—S. 48, Para. 2.]

#### Section 75—NOTE 2

1. See ('91) 13 All 66 (76) : 1890 All W N 238 (FB), *Radha Bai v. Nathu Ram*.

2. ('85) 8 Mad 532 (540), *Reference under Stamp Act, S. 46*.

Also see S. 2 (11) Note 9 ; S. 10 Note 17 and S. 13 Note 5.

3. ('81) 5 Bom 188 (198) (FB), *Daulatram Harji v. Vitho Radhoji*.

('84) 7 Mad 176 (181) (SB), *Reference under Stamp Act, S. 46*.

4. See (1894) 1894 App Cas 347 (360) : 63 L J P C 75 : 71 L T 205, *Institute of Patent Agents v. Lockwood*. (Per Lord Herschell, L. C.—Held that the rules made were “of the same effect as if they were contained in this Act” and as long as they remained in force it was not competent to question their authority.)



## Notification.

## CENTRAL GOVERNMENT

All functions of the Central Government under, or in relation to, Ss. 2 (9), 10, 16, 18, 33, 37, 49, 70, 74, 75 and 76A have been entrusted to the Provincial Governments.—See Government of India, Finance Department (Central Revenues) Notification No. 9 Stamps, dated the 13th November 1937.

NOTE.—For Notifications of the Provincial Governments see under the heading “Miscellaneous Notifications and Orders” in Appendix G.

## RELEVANT REFERENCE TO OTHER ACT.

## N.-W. F. P.

The reference to the Chief Controlling Revenue-authority is to be construed as referring to the Revenue Commissioner.—See S. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901).

\*77. Nothing in this Act contained shall be deemed to affect the duties charge-  
Saving as to court- fees. able under any enactment for the time being in force relating to court-fees.

## Provincial Amendments.

**BENGAL** At the beginning of S. 77 insert the following: “Except for the provisions as to copies contained in S. 6A.”—*Bengal Act III of 1922, S. 12.* [1-4-1922]

**BIHAR** Same as that of Bengal.—*Bihar Act VI of 1937, S. 12.* [1-1-1938.]

**CENTRAL PROVINCES** In S. 77 for the words “Nothing in this Act contained” substitute the following: “Nothing contained in this Act except section 6A so far as it relates to copies.”—*C. P. Act VI of 1939, S. 11.* [1-7-1939.]

**ORISSA** Same as that of Bengal.—*Orissa Act VI of 1943, S. 12.* [26-4-1943.]

**PUNJAB** Same as that of Bengal.—*Punjab Act VIII of 1922, S. 15.* [15-1-1923.]

**UNITED PROVINCES** Same as that of Bengal.  
—*U. P. Act III of 1936, S. 11.* [1-5-1936].

†78. <sup>a</sup>Every [Provincial Government] shall make provision for the sale of trans-  
Act to be transla- lations of this Act in the principal vernacular languages of the  
ted and sold cheaply. territories administered by it at a price not exceeding four annas  
per copy.

a. Substituted for the words “Local Government” by the A. O.

79. [Repeal]. Repealed by section 3 and Schedule II of the Repealing and Amending Act, 1914 (X of 1914).

\*[1879—S. 59 ; 1869—S. 17.]

†[1879—S. 60 ; 1869—S. 51 ; 1862—S. 37.]





GENERAL.

(A) Scheme of arrangement.

*Note 1.*—In the Central Act, there is now only one schedule, namely, Sch. I. After that schedule of the Central Act, Sch. IA has been *inserted* by Provincial Stamp (Amendment) Acts in Bengal, Bihar, Central Provinces and Berar, Coorg, Madras, Orissa, Punjab and United Provinces. After the separation of Pakistan, in West Punjab a new Sch. IA has been substituted for the old Sch. IA of Punjab by West Punjab Act XIV of 1948 which came into force on 1-8-1949. But the old Sch. IA still continues in force in the East Punjab.

*Note 2.*—After Sch. I of the Central Act, Sch. IA of each of the above Provinces is printed *separately* in the alphabetical order of the names of the Provinces.

*Note 3.*—Under the schemes of the above Provincial Stamp (Amendment) Acts, save those of Coorg and Madras, the articles in Sch. IA are numbered so as to correspond with similar articles in Sch. I of the Central Act. In Coorg and Madras the numbers of the articles in Sch. IA do not, in all cases, correspond with similar articles in Sch. I. The corresponding numbers of articles in Sch. IA of all the Provinces mentioned in Note 1 are indicated under the heading "Provincial Amendments" given under each article of schedule I.

*Note 4.*—There is no Sch. IA in the Provinces of Bombay and Sind. In these Provinces the articles in Sch. I of the Central Act are amended in their application to these Provinces. These amendments have been noted under the heading "Provincial Amendments" under the respective articles.

By the Bombay Finance Act, 1932 (Bom. Act II of 1932), Part V, sections 16 to 19, provision has been made for the levy of stamp-duties on certain instruments in certain cities and urban areas. The Bombay Finance (Sind Amendment) Act, 1943 (Sind Act II of 1943) read with Sind Finance Act, 1949 (Sind Act V of 1949), Part III has modified these provisions in their application to the city of Karachi and the towns of Hyderabad, Sukkur, Mirpurkhas, Larkana and Nawabshah. These provisions have been given in Appendix A at the end of Schedule IA.

*Note 5.*—In Bihar, Bombay and Orissa the duty leviable under various articles is increased by a surcharge. In Sind it has been doubled. This fact has been noted, wherever necessary, in the appropriate places. For the text of the Acts by which this is done, see Appendix H.

B) Amendments—Effect.

There are various articles in which the duty payable is not expressed as any sum of money but as being the same as or having a particular ratio to the duty payable on some other instrument provided for elsewhere in the schedule. See for instance, Arts. 2, 6, 8, 12, 13, etc.

Now, take Art. 13 (c) dealing with bills of exchange. The duty payable is the same as on a 'bond.' The duty on a *bond* has been raised by Provincial amendments in different Provinces. The question arises whether the amendments will affect the



duty on a bill of exchange under Art. 13 (c). On a plain interpretation of the words used, the duty under Art. 13 (c) would seem also to be raised in consequence of the enhancement of duty on bonds. But the difficulty in adopting this view is that the stamp duty on a bill of exchange is a subject for which, under the Government of India Act of 1935, (see Item 57, List 1, Seventh Schedule), the Central Legislature alone can legislate and if the above view is adopted, it might be argued that the duty on a bill of exchange would be enhanced as a result of *Provincial* legislation. But this argument would not be correct. The enhancement of duty on a bill of exchange would be due not to a Provincial statute but to the provision in the *Central* Act. The mere fact that under the *Central* Act, the provisions of a Provincial statute are adopted and made applicable to a matter within the exclusive legislative jurisdiction of the Central Legislature does not mean that the Provincial Legislature is allowed to *legislate* for such matter.

A similar construction is to be adopted in the case of other articles also where the duty is fixed with reference to the duty chargeable under some other article. In other words, where the duty under an article is altered, the alteration will also affect the duty payable under any other article where such duty depends on the duty payable under the former article.

## SCHEDULE I.

### STAMP-DUTY ON INSTRUMENTS.

(See Section 3.)

- |   |                  |
|---|------------------|
| <p>*1. <b>ACKNOWLEDGMENT</b> of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession : provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.</p> | <p>One anna.</p> |
|---|------------------|

### Provincial Amendments.

BIHAR See Bihar Sch. IA, Art. 1.

### BOMBAY

*Note.*—(i) All stamp duties leviable under the Indian Stamp Act, 1899, in its application to the Province of Bombay, except those leviable in respect of Bills of Exchange, Cheques, Promissory Notes, Bills of Lading, Letters of Credit, Policies of Insurance, Proxies and Receipts shall be increased by a surcharge at the rates specified in the Schedule annexed hereto.

(ii) The provisions of the Indian Stamp Act, 1899, in its application to the Province of Bombay shall, save in so far as they are inconsistent with anything contained in the Bombay Increase of Stamp Duties Act, 1943, apply for the purposes of that Act.



## SCHEDULE

## Rates of Surcharge

Amount of stamp duty	Rate of surcharge
(1) A fraction of a rupee not exceeding 1 anna ..	$\frac{1}{2}$ anna
(2) A fraction of a rupee exceeding 1 anna but not exceeding 2 annas .. .. .	1 anna
(3) A fraction of a rupee exceeding 2 annas but not exceeding 4 annas .. .. .	2 annas
(4) A fraction of a rupee exceeding 4 annas but not exceeding 8 annas .. .. .	4 annas
(5) A fraction of a rupee exceeding 8 annas .. ..	6 annas
(6) A whole rupee .. .. .	8 annas

—*Bombay Act XIV of 1943 [1-1-1944] as repealed and re-enacted by Bom. Act XII of 1948. [24-3-1948]* For the text of this Act, see Appendix H.

(iii) The provisions of the Bombay Finance Act, 1932, shall, be in addition to and not in derogation of the provisions of the Bombay Increase of Stamp Duties Act, 1943.

—*Bombay Act IV of 1945, S. 3. [31-3-1945.]*

CENTRAL PROVINCES See Central Provinces Sch. IA, Art. 1.

MADRAS See Madras Sch. IA, Art. 1.

ORISSA The stamp duty leviable under this article is increased by a surcharge by S. 2 of Orissa Act II of 1945. [1-7-1945.] For the text of this Act, see Appendix H.

UNITED PROINCES. See U. P. Sch. IA Art. 1.

## SIND

*Note.*—"For the existing rates of stamp duty prescribed in Sch. I of the Indian Stamp Act, 1899, as amended by Part IV of the Bombay Finance Act, 1932, rates equal to double those rates shall be substituted."

—*Sind Act V of 1949, Part III, S. 3 (a). [1-4-1949.]*

West Punjab see west Punjab Sch. IA, Art-1.

## Synopsis

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|--|---|
| 1. Legislative changes.                        | 9. Stipulation to pay interest.             |
| 2. English law.                                | 10. Acknowledgment and bond.                |
| 3. Scope of the article.                       | 11. Memorandum of purchase of goods.        |
| 4. Acknowledgment.                             | 12. Unstamped acknowledgment—Effect.        |
| 5. Acknowledgment must be of a debt.           | 13. Limitation.                             |
| 6. "Written or signed by or on behalf of."     | 14. Statement of account if acknowledgment. |
| 7. "In order to supply evidence of such debt." | See Note 7.                                 |
| 8. "Promise to pay the debt."                  | 15. Description of stamp. See Appendix C.   |



1. **Legislative changes.**—Prior to the Act of 1869, there was no provision for charging stamp duty on an acknowledgment.<sup>1</sup> Article 5, Sch. II of the Act of 1869 Provided for such stamp duty. The article ran as follows :

“Note or Memorandum written in any book or written on a separate paper, whereby any account, debt or demand therein specified, and amounting to twenty rupees or upwards, is expressed to have been balanced or is acknowledged to be due.”

It will be observed that this differs from the present article in two important respects : (a) The article in the Act of 1869 did not contain the requirement as to the instrument having been given for the purpose of supplying evidence of the debt. (b) The article in the Act of 1869 did not contain the proviso. The cases noted below<sup>2</sup> were decided with reference to the article in the Act of 1869.

The article in the Act of 1879 was the same as the present article except for the proviso which is new.

2. **English law.**—Under the English law, a bare acknowledgment of liability is not chargeable with duty. Thus, an I.O.U. or a bare acknowledgment of a loan or of indebtedness, containing no provision as to payment or other evidence of the terms of an agreement does not require any stamp.<sup>1</sup> Thus, the English law is different from the law under this Act which makes acknowledgments of debts exceeding Rs. 20 chargeable with duty.

#### Article 1 —NOTE 1

1. ('67) 1867 Pun Re Cr. No. 43, p. 79 (80) (DB), *Crown v. Jethoo Mull.*
2. ('80) 4 Bom 326 (328) : 5 Ind Jur 259 (DB), *Girdhar Naran v. Umar Aju.* (Notwithstanding stipulation for payment of interest one anna stamp was held sufficient.)
- ('76) 1876 Bom P J 175, *Fatta Jethaji v. Shiv Shankar*, (An account stated after Act XVIII of 1869 came into force, and unstamped, is inadmissible in evidence.)
- ('78) 2 Cal L Rep 346 (347) (DB), *Tariney Churn Nundy v. Sheikh Abdur Rohoman.* (An adjustment of account is not admissible in evidence, unless stamped with one anna stamp.)
- ('76) 25 Suth W R 361 (362) (DB), *Koonjo Mohun Doss v. Krishna Ghunder Shaha.* (Balance of account signed by creditor and not assented to by the debtor not within the Article.)
- ('75) 23 Suth W R 403 (404) (DB), *Ferrier v. Ram Kalpa Ghose.* (Instance where, even under 1869 Act, stipulation for interest was held to take the instrument out of the category of acknowledgment.)
- ('75) 24 Suth W R 439 (439), *Indra Chand Aswal v. Kalee Doss Mitter.* (The provisions contained in Art. 5, Sch. II, Act XVIII of 1869, mean that only once the stamp is to be affixed in a running account. The balance

brought forward from the close of a previous, year not being a new balance does not require fresh stamp.)

('78) 1878 Pun Re No. 2, p. 14 (18) (DB), *J. C. Morice v. Simla Bank Corporation Ltd.* (The “Note or Memorandum” must have been executed for the purpose of recording and affording evidence of an acknowledgment of debt.)

('73) 1873 Pun Re No. 33, page 54 (55) (DB), *Kalu v. Basanta Mal.* (Defendant sealed but did not stamp, a balance against himself in plaintiff's book—Held that under Act XVIII of 1869, the entry was admissible in evidence as this did not come within the meaning of an instrument chargeable with stamp duty as described in Sch. II, Art. 5.) Also see S. 23 Note 5.

#### Article 1—NOTE 2

1. (1822) 171 E R 898 (898) : Dow & Ry. (NP) 8 (9), *Childers v. Boulnois.* (I.O.U. does not require stamp.)
- (1795) 170 E R 407 (408) : 1 Esp 426 (427), *Fisher Gent v. Leslie.* (Do.)
- (1808) 170 E R 1035 (1035) : 10 R R 737, *Israel v. Israel.* (Do.)
- (1845) 153 E R 742 (743) : 15 L J Ex 191, *Goodyear v. Simpson.* (Statement of account containing admission of a certain balance being due from defendant to plaintiff.)



**3. Scope of the article.**—This article provides for the stamp duty payable on an acknowledgment. The following conditions are necessary for the applicability of the article :<sup>1</sup>

- (1) The acknowledgment must relate to a *debt*. (See Note 5.)
- (2) The debt must exceed Rs. 20.
- (3) The instrument must be written or signed by or on behalf of the debtor. (See Note 6.)
- (4) The instrument must have been brought into existence with the object of supplying evidence of the debt. (See Note 7.)
- (5) The instrument must be written in a book (other than a banker's pass-book) or on a separate piece of paper.
- (6) Such book or paper must be left in the possession of the creditor.
- (7) The acknowledgment must not contain a promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.

**4. Acknowledgment.**—This article refers to an instrument by which a person acknowledges that he owes a debt to another. An acknowledgment implies a pre-existing debt. It depends on the construction of each instrument whether it amounts to an acknowledgment.<sup>1</sup> An "I. O. U." is a good example of an acknowledgment of a debt.<sup>2</sup> The addition of the words "for value received" does not make it an agreement or promissory note.<sup>3</sup> A mere memorandum of a transaction will not amount to an acknowledgment of a debt.<sup>4</sup> (See also Note 11.)

A letter written by the creditor and signed by the debtor may be an acknowledgment.<sup>5</sup> The entry in the undermentioned case<sup>6</sup> was held to be an acknowledgment. See also Notes on S. 19 in A. I. R. Commentaries on the Limitation Act, 2nd (1942) Edn., for the meaning of the expression 'acknowledgment of liability.'

#### Article 1—NOTE 3

1. (1945) 24 Pat. 323. (324) (DB), Chairman D. Municipality v. Ghanshyamdas. Where a letter written by a debtor to a creditor is not intended to supply any evidence of the debt, and it contains a promise to pay the debt. Art. 1 does not apply, and it need not be stamped.

('39) 26 AIR 1939 Rang 315 (316) : 1939 Rang L R 194 : 185 Ind Cas 508, *Roshan N. M. A. Karim Omer & Co. v. Mohamed Ebrahim*.

#### Article 1—NOTE 4

1. ('82) 8 Cal 282 (284) : 6 Ind Jur 415 (DB), *Binja Ram v. Rajmohun Roy*.

('12) 39 Cal 789 (797) : 15 Ind Cas 279 (DB), *Galstoun v. Hutchinson*. (On the question whether a particular document in suit amounts to an acknowledgment of a debt one decision can hardly be an authority for another, for each case must depend on its own circumstances.)

('39) 26 AIR 1939 Rang 315 (319) : 1939 Rang L R 194 : 185 Ind Cas 508, *Roshan N. M. A. Karim Omer & Co. v. Mohammed Ebrahim*. (Do.)

2. ('28) 15 AIR 1928 Sind 89 (89) : 107 Ind Cas 213, *Chetumal v. Noorbhoy*.

3. (1845) 135 E R 653 (655) : 14 L J C P 175 ; 5 L T (O S) 93, *Gould v. Coombs*.

4. ('06) 28 All 436 (438) : 3 All L Jour 242 (DB), *Dulmha Kunwar v. Mahadeo Prasad*. ('05) 27 All 84 (86) : 1 All L Jour 483 (DB), *Udit Upadhaya v. Bhawani Din*. (A Note ran as follows: "Account of (defendants), 8th February 1901; interest 1 per cent. per mensem, payable 3rd May 1901, Rs. 500, borrowed from (plaintiff).") Held, it is nothing more than a memorandum or note drawn up between the parties as to a transaction which had just been settled between them.)

5. ('23) 10 AIR 1923 All 297 (297) : 45 All 374 : 71 Ind Cas 1027 (DB), *Ramdas v. Inayat-Ullah*.

6. ('08) 1908 Pun Re No. 119, page 539 (542, 543) : 1908 Pun W R 206, *Palamal v. Tullaram*. ("Sri Ganeshji Sahai." "Sar-khat kar ditta Pala Mal, Amar Nath etc. ne miti Poh Sudi teej Poh 18, Sambat 1959, 1st Jan. 1903." "Baqi dena raha tarikh 1 Jan. 1903." "Dast khat Roda Ram Garh-wala tikas laga ditta lene Pala Mal, Amar-nath ne dena Nikka Ram.....Dastakhat Roda Ram.")



5. **Acknowledgment must be of a debt.**—In order to come under this article, an acknowledgment must be of a *debt*.<sup>1</sup> Thus, an acknowledgment of receipt of money in satisfaction of a claim or debt is not an acknowledgment of a *debt*. Similarly, an acknowledgment by gate-peons of the receipt of goods is not an acknowledgment of a debt and does not require any stamp.<sup>2</sup>

Where an account has two sides, namely, “amount advanced” and “amount received” an entry in the column as to “amount advanced” will not necessarily be an acknowledgment of a *debt* merely because it is signed by the borrower. The reason is that such an entry may merely be an acknowledgment of the amount *advanced*. Whether that sum or a bigger or less sum than that is due depends upon the state of the account.<sup>3</sup>

A claims certain sums from B alleged to have been drawn by B on account of A from Court. B admits the receipt but claims a part of the money as his own. A letter written by A admitting this claim is not an acknowledgment of a *debt*.<sup>4</sup> The reason is that, A only admits that B does not owe a certain amount to him. A does not admit that he owes anything to B.

An acknowledgment of the correctness of an account is not necessarily the acknowledgment of a *debt*.<sup>5</sup>

6. **“Written or signed by or on behalf of.”**—In order that an acknowledgment may come under this article, it must be written or signed by or on behalf of the debtor. Hence, an instrument neither written nor signed by the debtor or his agent cannot fall under this article.<sup>1</sup>

As to the meaning of the word “signed” see Note 4 on S. 2 (12) and the under-mentioned cases.<sup>2</sup> The A. I. R. Commentaries on the Limitation Act, 2nd (1942) Edn., S. 19 may also be referred to.

The article uses the expression “written or signed” by the debtor. It is conceived that this only means “written and signed or merely signed” by or on behalf of the debtor and that an *unsigned* acknowledgment will not be liable to stamp duty though it may be in the *handwriting* of the debtor. For, under S. 3, it is only an instrument *executed* that is liable to stamp duty under this Act, and under S. 2 (12) “executed” means “signed.”

#### Article 1—NOTE 5

1. ('81) 3 All 781 (785, 786) : 1881 All W N 68 (DB), *Billings v. Uncovenanted Service Bank*. (Debt includes a judgment debt—Case under Contract Act S. 25 (3).)
2. ('33) Mad S M, p. 67. (Citing, B P 892-R., Mis., 6th July 1918.)
3. ('79) 4 Cal 885 (887) : 3 Cal L Rep 520 (DB), *Brojender Coomar v. Bromoye Chowdhurani*.

[See also ('10) 5 Ind Cas 756 (756) (Mad), *Muthia Nadar v. David Nadar*. (Mere signature in creditor's account books is not enough.)]

4. See ('75) 23 Suth W R 325 (326) (DB), *Situl Pershad v. Monohur Dass*.
5. ('36) 23 AIR 1936 Mad 939 (939) : 166 Ind Cas 750, *Chinna Subbaroyadu v. Narasimha Reddi*. (AIR 1925 Mad. 1215 followed.)

#### Article 1—NOTE 6

1. ('06) 28 All 436 (439) : 3 All L Jour 242 (DB), *Dulmha Kunwar v. Mahadeo Prasad*. (Unsigned memorandum of account may

be admitted in evidence for what it is worth—But it does not require stamp.)

- (84) 1884 All W N 164 (165), *Empress v. Bansidhar*. (Accounts made up for creditor's satisfaction alone—No writing or signing by debtor—Article does not apply.)
- (81) 1881 All W N 87 (88) (DB), *Mahpal Singh v. Mohesh Singh*. (Entry in plaintiff's account book.)

(87) 11 Bom 526 (527) (FB), *Harichand v. Jivna Subhana*. (Entry in the day books and ledger not in the handwriting of the debtor held not liable to stamp duty.)

[See ('80) 2 All 641 (643) : 5 Ind Jur 261 (DB), *Nand Ram v. Ram Prasad*. (Case under Act of 1869, Art. 5 which did not expressly mention signing—Still held unsigned entry of balance in creditor's book did not require stamp.)]

2. ('94) 18 Bom 586 (590) (DB), *Gangadhar Rao v. Shidramapa*. (Case under Limitation Act, S. 19—Debtor's signature need not necessarily be by writing his name, and



## ACKNOWLEDGMENT

7. "In order to supply evidence of such debt."—This article will only apply if the acknowledgment is given in order to supply evidence of the debt.<sup>1</sup> This is a question of intention of the debtor to be determined on the language of the instrument and the surrounding circumstances in each case.<sup>2</sup> In determining this question the Court must see what is the *dominant idea* in obtaining the document.<sup>3</sup> The instruments in the cases noted below<sup>4</sup> were held to have been given for the purpose of supplying evidence of the debt. The instruments in the undermentioned cases<sup>5</sup> were held not to have been given for such a purpose.

the making his mark by illiterate debtor at the foot of an acknowledgment makes it a valid one within the contemplation of section.) ('33) Mad S M p. 66. (Citing, B P 3155, 9th December 1881. Initials held equivalent to signature.)

(1867) 36 L J Ch 886 (889): 16 WR (Eng) 1: L R 2 H L 127 *Caton v. Caton*. (The mere circumstance of the name of a party being written by himself in the body of a memorandum of agreement will not of itself constitute a signature.)

## Article 1—NOTE 7

1. ('47) 34 AIR 1947 Nag 145 (150): ILR (1946) Nag 796: 226 Ind Cas 568 (DB), *Pachkodi Gulab v. Krishnaji*. [Art. does not apply when the intention of the person acknowledging is only to extend limitation and not to supply evidence of the debt, the transaction being already recorded in a *carkat* or book.]
- ('46) 33 AIR 1946 Nag 112 (113): ILR (1946) Nag 21, *Bulakhidas v. Ganpatrao*. [Intention to certify correctness of accounts and not to supply evidence of debt—Art. 1 does not apply.]
- ('45) 24 Pat 323 (324) (DB), *Chairman, D. Municipality v. Ghanshyamdas*.
- ('37) 24 AIR 1937 Oudh 391 (393): 13 Luck 334: 168 Ind Cas 799 (DB), *Satgur Nath v. Brahma Dut*.
- ('34) 21 AIR 1934 Pat 629 (630): 152 Ind Cas 879 (DB), *Habibul Rahaman v. Anwar Khan*. (Courtney Terrell C. J.—The policy of the article seems to be to provide for cases where the debtor and the creditor come to an arrangement between themselves that in consideration of some time or other advantage being granted by the creditor to the debtor the creditor demands as a condition that the debtor shall relieve him from the apprehension that the debt may be barred by limitation, or that the evidence upon which he would be able to rely may not be available at the time of the suit and it refers therefore to the special bargain where the debtor agrees to give the creditor evidence upon which he may rely to enforce the debt as a condition of a concession by the creditor to the debtor.)
- ('39) 26 AIR 1939 Rang 315 (319, 320): 1939 Rang L R 194: 185 Ind Cas 508, *Roshan N. M. A. Karim Omer & Co. v. Mohamed Ebrahim*.
- ('15) 2 AIR 1915 Low Bur 140 (141): 29 Ind Cas 943 (DB), *Ramdayal v. Gangadhar*

*Bogla*.

- ('84) 1884 All W N 164 (165), *Empress v. Bansidhar*.
- ('03) 30 Cal 687 (688) (DB), *Ambica Dat Vyas v. Nityanund Singh*.
- ('33) Mad S M, p. 67. (Citing, B. P No. 2988, 28th October 1885. A, a merchant, wrote a letter to B acknowledging a debt and promising to pay it in monthly instalments. Held that since the letter was not written in order to supply evidence of his debt it is not liable to stamp duty either under Article 1 or under Article 15.)
2. ('36) 63 Cal 813 (815): 40 Cal W N 399, *Jogendra Chandra v. Shacheendra Kumar*.
- ('92) 15 All 56 (58): 1892 All W N 234 (DB), *Bishabmer Nath v. Nand Kishore*.
- ('03) 30 Cal 687 (688, 689) (DB), *Ambica Dat Vyas v. Nityanund Singh*.
- ('25) 12 AIR 1925 Lah 119 (119): 85 Ind Cas 290, *Arjan Das v. Ram Labhaya*. (Oral evidence of surrounding circumstances admissible.)
- ('24) 11 AIR 1924 Mad 352 (354): 46 Mad 948: 74 Ind Cas 1029 (DB), *Surji Mull Murlidhar v. Ananta Lal*.
- ('38) 25 AIR 1938 Nag 51 (51): ILR (1939) Nag 695: 172 Ind Cas 880, *Tilak Chand Ratanlal v. Ram Kisan Ganeshdas*. (AIR 1924 Mad 352: 46 Mad 948 relied on.)
3. ('26) 92 Ind Cas 1046 (1046) (Mad), *Rama-Swami Iyengar v. L. Raghava Iyengar*.
- ('24) 11 AIR 1924 Mad 352 (353): 46 Mad 948: 74 Ind Cas 1029 (DB), *Surjimull Murlidhar v. Ananta Lal*.
- ('38) 25 AIR 1938 Nag 51 (51): ILR (1939) Nag 695: 172 Ind Cas 880, *Tilak Chand Ratanlal v. Ram Kisan Ganeshdas*.
- ('39) 26 AIR 1939 Rang 315 (318): 1939 Rang L R 194: 185 Ind Cas 508, *Roshan N. M. A. Karim Omer & Co. v. Mohamed Ebrahim*.
- ('30) 17 AIR 1930 Sind 189 (189, 190): 121 I. C. 873, *Dhanrajmal Kishindas v. Sanwansingh Sobhasing*.
4. ('33) 20 AIR 1933 All 577 (579): 146 Ind Cas 882, *Bindesari Prasad v. Ram Tapesha Singh*. (Amount borrowed and sarkhat executed—Such amount paid off and a fresh amount borrowed—Memorandum signed on old document, to the effect that a certain sum had been taken and that the liability was limited to this sum.)
- ('32) 19 AIR 1932 All 199 (201): 53 All 963: 137 Ind Cas 243 (DB), *Abdul Rafiq v. Bhajan*. (Formal acknowledgment of liability for a



An acknowledgment given for the purpose of saving limitation is not one given for supplying evidence of the debt.<sup>6</sup>

The existence or otherwise of other evidence to prove the debt is a matter to be taken into consideration while determining whether an acknowledgment was signed for the purpose of supplying evidence of the debt.<sup>7</sup>

#### Admission of correctness of account.

Where the acknowledgment relates to the balance of an account, a distinction must be made between an admission of the correctness of an account and an acknowledgment for the purpose of supplying evidence of a debt.<sup>8</sup> It is only in the latter case that this article will apply. It is a question of the intention of the parties under

certain amount found due on the balancing of accounts.)

('23) 10 AIR 1923 All 297 (297, 298) : 45 All 374 : 71 I. C. 1027 (DB), *Ram Das (Lala) v. Inayat Ullah*. (Document in question was in the form of a letter on a printed form in a book kept by plaintiff—Carbon copy taken from it and given to defendants to whom it was addressed—After mentioning certain credits and debits it concluded with the statement that a sum of Rs. 660 was due to plaintiff from defendants, errors and omissions excepted, and was signed by one of the defendants—Held that the way in which the book was kept and signed seemed to prove that the acknowledgment was made in order to supply evidence of the debt.)

(1900) 3 Oudh Cas 195 (197, 198, 201) (DB), *Jawahir Singh v. Lachmandas*. (New rukkhās executed—Old rukkhās returned—It may be inferred that intention of new rukkhās was to supply evidence of debt.)

5. ('45) 32 AIR 1945 Nag 212 (213) : ILR (1945) Nag 728, *Shriram v. Maroti*. (Endorsement on later mortgage bond incidentally referring to previous mortgage bond and stating that debt was separately due on that bond.—Acknowledgment held not made with dominant idea of furnishing evidence of debt and hence did not come under Sch. 1, Art. 1.)

(1945) 24 Pat 323 (324) (DB), *Chairman D. Municipality v. Ghanashyandas*. (Letter written by judgment debtor praying to decree-holder to agree to accept decretal money in easy instalments is not one intended to supply evidence of debt.)

('92) 15 All 56 (58) : 1892 All W N 234 (DB), *Bishambar Nath v. Nand Kishore*. (Where a letter, from a debtor to his creditor, written *anti litem motam* and before limitation in respect of the debt had expired, was tendered in evidence as an acknowledgment of the debt for the purpose of saving limitation, held, that the same was admissible for the said purpose, though unstamped, because it was not written with the intention of supplying evidence of the debt, and there was in existence at the time other evidence of the same.)

('03) 30 Cal 687 (688, 689) (DB), *Ambica Dat Vyas v. Nityanand Singh*. (Admission of liability by debtor and written order to his *tahsildar* to pay the amount to plaintiff.)

('98) 8 Mad L. Jour 66 (68) (DB), *Lakshminarayana v. Rama Jogi Garu*. (A letter written to one partner after the dissolution of partnership by the other partners setting forth the terms of compromise arranged between the parties with regard to the dispute between them regarding that partner's share in the partnership business (giving him an approximate amount of the profits standing to his share) is not an acknowledgment intended to be used as evidence of the debt so as to fall within Art. 1, Sch. 1 of the Stamp Act, but it must be treated as an agreement not otherwise provided for by the Stamp Act, and is therefore chargeable with a duty of eight annas under Art. 5, cl. (c) of Sch. I.)

('37) 24 AIR 1937 Oudh 391 (393) : 13 Luck 334 : 168 Ind Cas 799, *Satgur Nath v. Brahma Dut*. (Judgment-debtor sending sum of money through S with letter addressed to latter in which he asked S to pay the money to the decree-holder and ask for further time to pay the balance—Held that the letter was not an acknowledgment.)

Also see Art. 5 Note 13.

6. ('47) 34 AIR 1947 Nag (145) 150 ILR (1946) Nag 796 : 226 Ind Cas 568 (DB), *Pachkodi Gulab v. Kirhsnaji*. (Intention of debtor in acknowledging debt not to supply evidence of debt but merely to extend limitation—Art. 1 does not apply.)

('45) 32 AIR 1945 Nag 181 (183) : ILR (1945) Nag 745 (DB), *Abdul Hussein v. Rev. Livesay*. (Dominant intent of acknowledgment not to supply evidence of debt but to save limitation—Other evidence of debt subsisting when acknowledgment given—Sch. I Art. 1 (does not apply.)

[See ('92) 15 All 56 (58) : 1892 All W N 234 (DB), *Bishanker Nath v. Nand Kishore*.

('96) 19 Mad 255 (255, 256), *Suryanarayana v. Narendra Thatraj*. (Lower Court held to be in error in rejecting an unstamped acknowledgment relied upon to save limitation : 15 All 56 and 18 Bom 614, Foll.)]

7. ('25) 12 AIR 1925 Mad 1215 (1216) : 91 Ind Cas 494 (DB), *Nagappa Nadar v. Karupiah Nadar*.

[See (1836) 111 E R 1002 (1003) : 5 L J (NS) K B 155 : 43 R R 495, *Morris v. Dixon*.]

8. ('47) 34 AIR 1947 Bom 337 (338) : ILR (1947) Bom 223, *Manilal v. Natwarlal*. (A debtor's admission as to correctness of account taken in writing in order that he may



which category an instrument falls.<sup>9</sup> In the undermentioned cases,<sup>10</sup> the instrument was held to be merely an admission of the correctness of the account and not an acknowledgment under this article, as the acknowledgment had not been made

not subsequently dispute its correctness cannot be regarded as an acknowledgment intended to supply evidence of debt.)

(41) 28 AIR 1941 Nag 70 (71): 192 Ind Cas 891, *Madhaorao v. Hanmant*. (Admission of the correctness of accounts is not the same as acknowledgment of liability. The debtor's admission taken on a memo so that he might not subsequently dispute its correctness cannot be regarded as an acknowledgment under Art. 1 executed to supply evidence of the debt.)

(38) 25 AIR 1938 Pat 139 (140): 174 Ind Cas 585, *Ramprabha Ojha v. Bishunath Ojha*. (An acknowledgment of the correctness of account does not require a stamp to be valid: AIR 1936 Mad 936, followed.)

9. (82) 8 Cal 282 (284): 6 Ind Jur 415 (DB), *Binja Ram v. Rajmohun Roy*.

(25) 12 AIR 1925 Lah 119 (119): 85 Ind Cas 290, *Arjan Das v. Ram Labhaya*. (Whether a balance signed by a debtor in the books of his creditor amounts to an acknowledgment is a question depending upon the form of entry and the intention of the entry.)

†(24) 11 AIR 1924 Mad 352 (353, 354): 46 Mad 948: 74 Ind Cas 1029 (DB), *Surjimull Murlidhar v. Ananta Lal*. (When the document contains other entries from which it is right to deduce that the intention is to arrive at a statement of account or to put on record payments on either side, the intention to be inferred from the sending of the document, although it contains a balancing item at the end, is not to supply evidence to the creditor. Test is, looking at the document and the surrounding circumstances, what was the intention with which that document was given; was that meant to be a bare acknowledgment and a promise to pay to be used in evidence against the sender or was it sent for some other dominant purpose.)

[See (36) 23 AIR 1936 Cal 470 (472): 166 Ind Cas 543, *Prosana Kumari v. Tripuracharan*. (Promissory note—Settlement of accounts between creditor and debtor and striking of balance—Endorsement on back of the note signed by debtor reciting settlement of accounts and amount found due if acknowledgment—Question not decided.)]

10. (46) 33 AIR 1946 Nag 112 (113): ILR (1946) Nag 21, *Bulakhidas v. Ganpatrao*. (Where the dominant intent in obtaining the signature of the debtor was that he should not dispute the correctness of the account thereafter, and the claim was not getting barred by time on that date, the document does not fall within the article.)

\* (36) 63 Cal. 813 (816): 40 Cal W N 399, *Jogendra Chandra v. Shochendra Kumar*.

(Where there is a series of transactions between two parties and in the books of the creditor the advances made from time to time are entered on the debit side and the payments made from time to time are entered on the credit side, and 6 monthly balances struck therein and signed by the debtor and the balances carried over, although the entries in those books signed by the debtor can be used as acknowledgments under S. 19, Limitation Act, they would require no stamp either under Art. I or Art. 5.)

(12) 39 Cal 789 (796): 15 Ind Cas 279 (DB), *J. C. Galstaun v. W. O. Hutchison*. (Account adjusted and balanced and signed as correct—Balance carried forward—Further debit entries continued—Held, there was no intention to supply evidence of debt.)

(88) 15 Cal 162 (164) (DB), *Nundkumar Shaha v. Shurnomoyi Dasi*. (A Nikash prepared and signed by a gomasta of a business, showing a balance due by him to the owner of the business, is not an acknowledgment of a debt within the meaning of Art. 1 of the Act and is admissible in evidence unstamped.)

(83) 9 Cal 127 (130) (DB), *Brojo Gobind Shaha v. Goluck Chunder Shaha*. (An account of advances made to, and part-payments made by, the defendants, in his handwriting and signed by him, need not be stamped, in order to be admissible in evidence.)

(33) 20 AIR 1933 Lah 962 (963): 146 Ind Cas 1009, *Ramji Mal-Gordhan Das v. Bela Ram*. (A document purported to be a letter written by the defendant to the plaintiff firm and contained references to the dealings in question as well as to certain other transactions. The final words in the document that the letter had been written so that it may remain as a sanad and might be of use in time of need, referred to the other transactions, and did not have any connexion with the dealings in dispute—Held that it was not an acknowledgment within the meaning of Sch. I, Art. 1.)

(25) 12 AIR 1925 Mad 1215 (1215): 91 Ind Cas 494 (DB), *Nagappa Chetty v. V. A. A. R. Firm*. (Letter by creditor sending an account—Reply by debtor that account is correct—Held that it did not come under This Article.)

\* (24) 11 AIR 1924 Mad 352 (353, 354): 46 Mad 948: 74 Ind Cas 1029 (DB), *Surjimull Murlidhar v. Ananta Lal*. (A Roka containing and showing debit and credit entries, the amount of interest and a balancing item at the end and the words "balances payable up to a certain date" and the signature of the person giving the Roka is not an



for the purpose of supplying evidence of the debt. In the cases noted below,<sup>11</sup> the balance signed by the debtor was held to be an acknowledgment coming within this article.

acknowledgment coming under Art. 1 of Sch. I of the Stamp Act.—AIR 1915 Cal 280 and 21 Bom 201 distinguished on facts; AIR 1917 Mad 14 dissented from.)

(41) 28 AIR 1941 Nag 70 (71): 192 Ind Cas 891, *Madhaorao v. Hanmant*. (Where an agent, some time after quitting service, on being shown that he had not accounted for certain sums of money, admits the correctness of the amount due and signs a memo of accounts, it is not meant to be an acknowledgment to serve as evidence of liability. In a suit by the employer for the amount agreed to be due, the memo is admissible only to the extent of proving the admission by the agent of the correctness of the memo. It cannot be regarded as an acknowledgment under Sch. I, Art. I of the Stamp Act.)

(38) 25 AIR 1938 Nag 51 (51): I L R (1939) Nag 695; 172 Ind Cas 880, *Tilak Chand Ratanlal v. Ram Kisan Ganeshdas*. (The letter by the debtor contained the following words—"Your gumasta came this day and therefore the amount of your khata has been tallied up to 10th November 1931 and Rs. 359-0-9 have been found due to you. So you will please enter the same as due. Errors and omissions excepted." This was held to be not an acknowledgment within Art. 1.)

(15) 2 AIR 1915 Low Bur 140 (141): 29 Ind Cas 943 (DB), *Ram Dayal v. Kumar Gangadhar Bogla*. (A book entry may be an acknowledgment that the amount stated therein has been advanced, but it is not an acknowledgment of a debt. Whether the sum noted as advanced is due, depends on the state of the account between the parties.)

(39) 26 AIR 1939 Rang 315 (318): 1939 Rang L R 194: 185 Ind Cas 508, *Roshan N. M. A. Karim Omer & Co. v. Mohamed Ebrahim*. (Held that taking into consideration that the transactions were continuing transactions and at no point of time was it ever contemplated that any of these particular balances would ever become payable in cash by B to A the real purpose for which these documents were brought into existence was not the supply of evidence of an actual debt. The balance was struck and signed, not for the purpose of being evidence that that money was then due but simply as one of a series of statements of accounts, which, for the convenience of the parties, were exchanged at fixed intervals. Hence it was not a document required to be stamped under Art. 1.)

(30) 17 AIR 1930 Sind 189 (189, 190): 24 Sind L R 372: 121 Ind Cas 873, *Dhanarajmal Kishindas v. Sanwansing Sobhasing*. (Where a document contains other entries from which it can be deduced that the intention is

to arrive at a statement of account or to put on record payments on either side, the intention to be inferred from the signing of the document, although it contains a balancing item at the end, is not to supply evidence to the creditor. There was qualifying statement in a document that the differences were to be accounted for by excepting errors and omissions, there being other entries in the account besides the amount shown as due. Held that the dominant intention could not be to supply evidence of the debt to the creditor.)

Also see S. 3 Note 9.

11. (47) 34 AIR 1947 Bom 337 (338): ILR (1947) Bom 223, *Manilal v. Natwarlal*. (An endorsement by the debtor in the books of the creditor, containing the details and the total amount of the debt "found due after understanding accounts" and signed by the debtor, and intended to serve the purpose of an acknowledgment, falls under Art. 1, Sch. I)

(85) 1885 Bom P J 198, *Ravji v. Devchand*. (Account signed by a debtor in his creditor's book containing express promise or terms equivalent to it is not a promissory note, but an acknowledgment of a debt.)

(84) 1884 Bom P J 13, *Civil Reference No. 58 of 1883*. (Signed accounts which are not engagements to pay at any particular time but are mere acknowledgments to be used, if need be, as evidence under Art. 1, and are therefore properly stamped with one anna—Case under Act of 1879.)

(15) 2 AIR 1915 Cal 280 (281): 22 Ind Cas 858 (DB), *Sitaram v. Ram Prasad Ram*. (Adjustment of account—Balance struck and a certain sum stated to be due—Held, to be acknowledgment coming within this Article—39 Cal 78, distinguished on facts.)

(25) 12 AIR 1925 Lah 119 (119) 85 Ind (Cas 290), *Arjan Das v. Ram Labhaya*.

(17) 4 AIR 1917 Mad 14 (16): 37 Ind Cas 984 (DB), *Rama Swami v. Ghanamani*.

(See (12) 39 Cal 789 (799): 15 Ind Cas 279 (DB), *J. C. Galstaun v. W. O. Hutchison*).

(Obiter, Per Woodroffe J:—"If, for instance, an account is balanced at the end of a year and is accepted as correct and a separate entry were made admitting its correctness and acknowledging the balance found to be due on that account as owing to the creditor, then I conceive that such an entry might amount to an acknowledgment within the meaning of the stamp Act and require a stamp. The Court in such a case might perhaps reasonably infer an intention to acknowledge a debt, notwithstanding that such debt was transferred to the next yearly account. The question, however, is one of intention to be gathered



8. **"Promise to pay the debt."**—An acknowledgment containing a promise to pay the debt has been expressly excluded by the proviso from the applicability of this article.<sup>1</sup>

An unconditional acknowledgment itself implies a promise to pay.<sup>2</sup> But it is clear that in the context of this article, the promise referred to is an *express* promise—not one which is merely implied in an unconditional acknowledgment of liability.<sup>3</sup> The promise to pay must be in writing. Mere oral promise at the time of signing the acknowledgment is not enough.<sup>4</sup>

It is a question of construction of the instrument in each case whether it is an acknowledgment containing a promise to pay the debt.<sup>5</sup> The undermentioned cases<sup>6</sup> afford some illustrations. The question must be decided with reference

from the circumstances of each case.<sup>1</sup>)]

#### Article 1—NOTE 8

1. ('33) 20 AIR 1933 All 179 (180) : 54 All 761 : 142 Ind Cas 688 (DB), *Ram Prasad v. Sheo Baksh*.
- ('34) 21 AIR 1934 Mad 25 (25, 26) : 146 Ind Cas 943, *Kadir Moithin v. Panduranga Naidu*.
- ('38) 25 AIR 1938 Nag 464 (464) : 177 Ind Cas 889, *Narbada Prasad v. Mt. Sunki*. (Note—The judgment says that as it is both an acknowledgment and an agreement, it must under S. 6 (b) be charged with the higher duty under Art. 5 (c). This is not correct. It is not an "acknowledgment" at all for stamp purposes.)
- ('34) 21 AIR 1934 Pat 629 (630) : 152 Ind Cas 879 (DB), *Habibul Rahman Khan v. Anwar Khan*. (Where therefore a judgment-debtor in his letter asks the creditors to have full faith in him as he intends to reap his crops shortly and faithfully promises to pay the sum within three weeks, the letter is not acknowledgment.)
2. ('06) 33 Cal 1047 (1058) : 33 Ind App 165 : 2 Nag L R 130 (PC), *Maniram Seth v. Seth Rupchand*. Also see Note 12.
3. ('47) 34 AIR 1947 Bom 337 (338) : ILR (1947) Bom 223, *Manilal v. Natwarlal*.
- ('08) 30 All 268 (269) : 5 All L Jour 274 (DB), *Gobinddas v. Sarjudas*.
- ('36) 23 AIR 1936 Cal 399 (400) : 165 Ind Cas 520 (DB), *Bogra Loan Office Ltd. v. Jyotish Chandra*.
- ('33) 20 AIR 1933 Lah 271 (273) : 142 Ind Cas 535, *Jagannath v. Mt. Chauhi*.
- ('34) 21 AIR 1934 Nag 273 (273) : 31 Nag L R 105 : 153 Ind Cas 255, *Ram Chandra Bachharaj v. Muka Gujan*.
- ('19) 6 AIR 1919 Nag 141 (142) : 50 Ind Cas 781, *Sitaram v. Thakurdas*.
- [But see ('31) 18 AIR 1931 Lah 631 (631) : 132 Ind Cas 881 (DB), *Pahlad v. Shib Lal*. (Entry in bahi account, purporting to be an unconditional acknowledgment by the executant—Held implied a promise to pay (33 Cal 1047 : 33 Ind App 165 : 2 Nag L R 130 (PC), followed ; 1908 Pun Re No. 119, Dissent). It is not an acknowledgment but an "agreement"—Submitted wrong.)
- ('31) 132 I. C. 844 (844) (DB) (Lah), *Relu Mal*

*v. Shoran*. (Where the plaintiff produced an entry in his bahi showing that the defendant after going through the previous account struck a balance as due to the plaintiff, held that the entry was an acknowledgment which imported a promise to pay and amounted to an "agreement"—Submitted wrong.)]

4. See ('84) 8 Bom 194 (195) (FB), *Chowksi Himutlal v. Chowksi Achrutlal Harivalubhdas*. (A khata (account stated)—Defendants (debtors) undertook to pay it, but there was no promise made in writing—Held, to be an acknowledgment.)
5. ('03) 1903 Pun Re No. 35 page 111 (113) : 1903 Pun L R No. 101 (FB), *Daula v. Gonda*. (Every instrument must be considered on its own merits.)
6. (1945) 24 Pat 323 (324) (DB), *Chairman D. Municipality v. Ghanashyamdas*. (Letter written by debtor praying that "the decretal money may be so adjusted in easy instalments that I may be in a position to pay the current taxes along with the instalments"—Letter is not an acknowledgment within Sch. I Art. 1 as it contains a promise to pay.) ('83) 1883 All W N 127 (127) (DB), *Banda Husain v. Yawar Husain*. (A document contained an entry to the following effect, and it bore a stamp of one anna:—"Out of Rs. 22-3-0 due to Shaik by my late elder brother Ahmed, I have paid Re. 1; the balance will be paid by instalments"—The entry was signed by the defendant, Held that the instrument was nothing more than an acknowledgment of debt and was sufficiently stamped.)
- ('36) 23 AIR 1936 Cal 399 (400) : 165 Ind Cas 520 (DB), *Bogra Loan Office, Ltd. v. Jyotish Chandra*. (Words, "We are going to pay the whole debt soon" held to constitute promise to pay the debt.)
- ('42) 29 AIR 1942 Lah 50 (54 to 56) : I L R (1942) Lah 282 : 199 Ind Cas 161 (FB), *Shivram Punnun Ram v. Faiz*.
- '38) 25 AIR 1938 Lah 511 (512) : 178 Ind Cas 197, *Duli Chand Maidhan v. Panthi*. ("Baqui rehe lene lekha ker ke char so tees rupia." Held, was an agreement and not a mere acknowledgment.)
- ('38) 25 AIR 1938 Lah 503 (505) : 177 Ind



to the language used in, and not to the legal obligations arising from, the instrument.<sup>7</sup>

An acknowledgment of debt containing a promise to pay the debt may be a bond or promissory note or mere agreement according to the nature of the instrument in each case.<sup>8</sup>

The mere fact that an acknowledgment is attested by a witness will not remove it from the category of acknowledgment and make it a bond where the instrument does not contain a promise to pay the debt.<sup>9</sup>

The promise to pay which will remove an acknowledgment from the purview of this article is one by the *debtor*. Hence, an acknowledgment by a debtor coupled with a promise to pay the debt by his *surety* will be governed only by this article for purposes of stamp duty.<sup>10</sup>

As an instrument not duly stamped cannot be admitted in evidence for *any purpose*, (See Notes on S. 35) an insufficiently stamped promissory note cannot be admitted in evidence as an acknowledgment. A further reason for this is that the promise to pay the debt which is contained in such a document excludes it from the category of an acknowledgment under this article.<sup>11</sup>

- Cas 270 (DB), *Tekchand v. Ata Mohammad*. ("Baqi rahe" is merely acknowledgment—"Baqi dene" is promise to pay the balance.)
- ('15) 2 AIR 1915 Lah 279 (280): 1916 Pun Re No. 16: 30 Ind Cas 491 (DB), *Jasram v. Attar Chand*. "We are unable to draw any distinction between the phrase 'baqi dena' and the phrase 'baqi dena rahe' found in 1908 Pun Re No. 119 or the phrase 'baqi dena' found in 8 Bom 405. All the three phrases are equivalent to the English phrase 'balance due' and though acknowledgment, do not amount to a promise to pay.")
- ('04) 1904 Pun Re No. 68 p. 192 (196): 1904 Pun L R No. 123 (DB), *Ganpat v. Dowlat Ram*. ("Lekha Ganpat Nanda Virwala da Sambat 1957 Mitti Katak 23 Rs. 51-14-0 baqi ahde Rs. 51-14-0 hathi Ganpat di Nandadi maoariki 23 Katak 1957 mubligh Rs. 51-14-0 ruburn Ibrahim." Held mere acknowledgment.)
- ('03) 1903 Pun Re No. 35 page 111 (113): 1903 Pun L R No. 101 (FB), *Dcula v. Gonda*. (Acknowledgment attested by witness and stating that the plaintiff was to receive the balance held to be bond and not mere acknowledgment.)
- ('84) 8 Bom 405 (407) (DB), *Ranchhoddas Nathubhai v. Jeychand*. (Gujrati words "Baki deva" merely import "Balance due" which do not of themselves amount to a promise to pay within S. 25 (3), Contract Act.)
- ('98) 21 Mad 49 (50): 7 Mad L Jour 291 (DB), *Tirupathi v. Rama Reddi*. (Words "I am liable to pay" do not amount to a promise to pay.)
7. ('42) 29 AIR 1942 Lah 50 (54 to 56): I L R (1942) Lah 282: 199 Ind Cas 161 (FB),

- Shiv Ram Punnum Ram v. Faiz*.
8. ('14) 1 AIR 1914 All 259 (259): 36 All 11: 21 Ind Cas 601 (FB), *Mutsaddilal v. Harakesh*. (Agreement.)
- ('01) 3 Bom L R 839 (841) (SB), *Mathurbhai v. Dalpat*. (Promissory note.)
- ('87) 1887 Bom P J 295 (DB), *Abdul v. Kasam*. (A khata containing an unconditional undertaking to pay Rs. 10 in the month of Phalgun next and Rs. 10 in each following Phalgun and in the obligor's handwriting or signed by him is a promissory note and not a mere acknowledgment.)
- ('82) 8 Cal 645 (648): 7 Cal L Rep 88 (DB), *Manick Chand v. Jomoona Doss*. (Promissory note.)
- ('34) 21 AIR 1934 Lah 730 (732): 153 Ind Cas 233 (DB), *Thakardas v. Sher Ahmad*. (Agreement.)
- ('34) 21 AIR 1934 Mad 25 (25, 26): 146 Ind Cas 943, *Kadir Moithin v. Panduranga Naidu*. (Do.)
- ('14) 1 AIR 1914 Mad 657 (658): 38 Mad 660: 21 Ind Cas 864 (DB), *Muthu Sastrigal v. Visvanatha Pandara*. (Promissory Note). Also see S. 2 (5) Note 7 and S. 2 (22) Note 10.
9. ('42) 29 AIR 1942 Lah 50 (54 to 56): ILR (1942) Lah 282: 190 Ind Cas 161 (FB), *Shiv Ram Punnum Ram v. Faiz*.
10. See ('83) 1883 Bom P J 13 (DB), *Babaji v. Mahadu*. (An account stated signed by the principal debtor and sureties who stipulate to pay on default by the principal is sufficiently stamped with a one anna adhesive stamp.)
11. ('36) 63 Cal 813 (816): 40 Cal W N 399, *Jogendra Chandra Banerjee v. Sachindra Kumar Seal*.



The Notes on Ss. 2 (22) and 2 (5) may be consulted as to what will amount to a "promise" to pay the debt.

There is a conflict of decisions as to whether an acknowledgment of liability can itself be the basis of a suit as containing by implication a promise to pay. (See A. I. R. Commentaries on the Limitation Act, 2nd (1942) Edn., S. 19, Note 8). But this question is purely of academic interest for stamp purposes as, so far as this article is concerned, it is clear that the promise *implied* in an unconditional acknowledgment is not the kind of promise meant by the proviso to the article.

**9. Stipulation to pay interest.**—The proviso expressly excludes from the purview of this article an acknowledgment containing a stipulation to pay interest. Such an instrument must be treated as an *agreement* for purposes of this Act.<sup>1</sup> The stipulation to pay interest need not contain express words of promise or agreement. Even words which merely state a particular rate of interest, e.g., "interest at annas 12 per cent. per mensem" will be enough to take the instrument out of the purview of this article provided that the words imply a promise to pay interest at the named rate.<sup>2</sup>

It depends on the construction of the instrument in each case whether it contains a stipulation for the payment of interest. Thus, in a suit for money, an extract from plaintiff's account book was put in as evidence. In it the defendant had written and signed in his own hand a statement that he had received a certain sum of money. Above this signed statement, there was an entry in the book to the effect that the money was to carry interest at a certain rate. It was held that the whole of the extract from the account book could not be considered as a single document for which the defendant was responsible, that the entry as to the interest did not profess to be a document executed by the defendant and that it was only a mere acknowledgment of debt for the purpose of stamp duty.<sup>3</sup>

#### Article 1—NOTE 9

1. ('34) 21 AIR 1934 All 1052 (1053) : 152 Ind Cas 41 (DB), *In re Sukhdeo Prasad*.  
( '33) 20 AIR 1933 All 179 (180) : 54 All 761 : 142 Ind Cas 688 (DB), *Ram Prasad v. Sheo Baksh*.  
( '29) 16 AIR 1929 All 980 (981) : 52 All 169 : 121 Ind Cas 108 (DB), *Govind Singh v. Bijay Bahadur Singh*.  
'26) 93 Ind Cas 317 (317) (All), *Baburam v. Lakhan Singh*.  
( '19) 6 AIR 1919 All 196 (199) : 41 All 169 : 52 Ind Cas 974 (DB), *Mahadeo Kori v. Sheoraj Ram*.  
( '23) 10 AIR 1923 Cal 659 (662) : 79 Ind Cas 77 (DB), *Prasanna Kumar v. Panaulla Miji*.  
'08) 35 Cal 111 (113) : 11 Cal W N 1120 (FB), *Mulchandlala v. Kashi Bullav Biswas*.  
( '30) 17 AIR 1930 Oudh 194 (195) : 5 Luck 218 : 123 Ind Cas 853 (DB), *Ballabh Das v. Puran*. (A memorandum of rate of interest to be payable in future appended to an acknowledgment over the signature of the debtor makes it a memorandum of agreement within Article 5 of Sch. I.)  
( '16) 3 AIR 1916 Sind 66 (68) : 9 Sind L R 150 : 32 Ind Cas 582, *Ram Singh v. Parumal*.  
Also see S. 2 (5) Note 7 and Art. 5 Note 14.
2. ('27) 14 AIR 1927 All 677 (678) : 49 All 496 : 100 Ind Cas 593 (DB), *Prahlad Prasad v. Bhagwandas*.  
( '01) 25 Bom 373 (375) : 2 Bom L R 1132 (FB), *Laxmibai v. Ganesh Raghunath*.  
( '07) 11 Cal W N 1122 (1124) (DB), *Enatullah Biswas v. Gajaruddi Biswas*. (*Hatchitta* with an implied promise to pay interest held, amounts to an agreement under Art. 5 (c).)  
( '31) 18 AIR 1931 Lah 4 (4) : 127 Ind Cas 706, *Sudhan v. Baru*. (Where the balance of account was struck between the parties and above the entry of the balance and the thumb impression of the debtor there was a line which described the rate of interest on the balance struck, held, that the entry must be read as a whole, that there was a clear stipulation to pay interest, and that the balance fell within the proviso to Article 1 of the 1st Schedule of the Stamp Act.)  
( '08) 4 Low Bur Rul 330 (330) : 14 Bur L R 287 (FB), *In re K. M. K. R. Kumarappa Chetty*. (Ormong, J., dissenting.)  
Also see S. 23 Note 5.
3. ('33) 20 AIR 1933 All 256 (256) : 147 Ind Cas 212 (FB), *Ram Prasad Ram Kumar v. Parshotam Halwai*.



An acknowledgment containing a stipulation to pay interest cannot be held to consist of several separate agreements merely because it relates to several items.<sup>4</sup>

The article in the Act of 1879 did not contain the proviso.<sup>5</sup>

**10. Acknowledgment and bond.**—A bond has been defined in S. 2 (5). The essential difference between an acknowledgment and a bond is that the former does not itself give rise to an obligation to pay while the latter does. The mere fact that in law an acknowledgment *implies* a promise to pay is not sufficient to make it a bond though the document may be attested. On this principle the instruments in the undermentioned cases<sup>1</sup> were only acknowledgments and not bonds.

A bond is chargeable under Art. 15 with an *ad valorem* duty. But an acknowledgment of a debt is chargeable with a fixed duty of one anna under this article. Where an instrument is held to be an acknowledgment under this article, if it is not duly stamped, it will be totally inadmissible in evidence under S. 35 while if it is held to be a bond it will be admissible in evidence on payment of the deficient duty and penalty. (For fuller discussion see S. 2 (5), Note 7.)

**11. Memorandum of purchase of goods.**—A memorandum of purchase of goods signed by a customer buying on credit is not an acknowledgment of a *debt*.<sup>1</sup> It has been held that it is not even an agreement or memorandum of agreement but only a voucher.<sup>2</sup> Even if it were held to be an agreement it would be exempt from stamp duty under Exemption (a) under Article 5.<sup>3</sup>

**12. Unstamped acknowledgment—Effect.**—An acknowledgment being an instrument chargeable with a duty of one anna, it is excepted from Proviso, (a) to S. 35. Hence, an unstamped acknowledgment cannot be admitted in evidence even on payment of penalty.<sup>1</sup>

4. ('28) 15 AIR 1928 All 162 (163) : 50 All 504 : 118 Ind Cas 173 (FB), *In the matter of Shyam Sunderlal*.

Also see S. 2 (12) Note 4 and Art. 5 Note 14.

5. See ('95) 22 Cal 757 (759) (DB), *Hira Lal v. Queen Empress*. (Case under Act of 1879—Acknowledgment not converted into bond merely because it contains a memorandum as to the rate of interest and is attested by a witness.)

#### Article 1—NOTE 10

1. ('90) 14 Bom 511 (512) (DB), *Dulabh Vanmali v. Rahman Jamal*. (Khata in debtor's name containing his acknowledgment of receipt of loan amount—Affixture of signature of writer as such—*Held*, mere acknowledgment.)

†('37) 24 AIR 1937 Lah 220 (222) : 170 Ind Cas 68 (DB), *Dewan Chand v. Punjab & Kashmir Bank*. (Acknowledgment of a debt due to the creditor, signed by the debtor and attested by two witnesses, in the creditor's account.)

('33) 20 AIR 1933 Lah 271 (273) : 142 Ind Cas 535, *Jagannath v. Mt. Chauhi*. (Entry

in Bahisaccount.)

†('85) 1885 Pun Re (Rev) No. 4 page 7 (7), *Chamba Ram v. Crown*. (Entry in account book acknowledging correctness of balance found on taking accounts.)

('33) Mad S M, page 66. (Citing, B P 90, 17th February 1890—Document merely containing particulars of debit and credit.)

Also see S. 2 (5) Note 7.

#### Article 1—NOTE 11

1. ('35) 22 AIR 1935 Lah 567 (568, 569) 158 Ind Cas 234 (SB), *Nanak Chand v. Fattu*.

('33) Mad S M, page 67. (Citing, B P No. 892 R. Mis., 6th July 1918.)

2. ('35) 22 AIR 1935 Lah 567 (568, 569) : 17 Lah 1 : 158 Ind Cas 234 (SB), *Nanak Chand v. Fattu*. (For criticism of this decision see Art. 5 Note 17.)

3. See ('33) Mad S M, page 67.

#### Article 1—NOTE 12

1. See ('33) 20 AIR 1933 All 577 (577) : 146 Ind Cas 882, *Bindesari Prasad v. Ram Tapesha Singh*. (No saving clause in respect of an acknowledgment.)



In the case noted below<sup>2</sup> it was held that an unstamped acknowledgment though not admissible in evidence as an acknowledgment in regard to the particular sum could yet be admitted for a collateral purpose, as an acknowledgment of liability in respect of goods sold. As seen in Note 8 on S. 35 this view is not justified by the terms of S. 35.

It follows from this that an unstamped acknowledgment cannot be relied on also for the purpose of saving limitation.<sup>3</sup>

In the undermentioned case<sup>4</sup> it was held by the Lahore High Court that as an acknowledgment implies a promise to pay,<sup>5</sup> an unstamped acknowledgment can be admitted in evidence as an agreement on payment of penalty. This view has been dissented from by the Nagpur Judicial Commissioner's Court<sup>6</sup> and, it is submitted, not correct. The Lahore view leads to the result that a document is an acknowledgment if it is stamped and an agreement if it is not stamped. For the purposes of the Stamp Act an acknowledgment of a debt must be treated only as such an acknowledgment and not as an agreement notwithstanding that every acknowledgment necessarily implies a promise to pay.

But the mere fact that the entry in an account book amounts to an acknowledgment of a debt and is not admissible in evidence owing to its not being duly stamped, does not preclude the book itself being admitted in evidence as a book kept in the regular course of business.<sup>7</sup>

**13. Limitation.**—Under S. 19 of the Limitation Act, an acknowledgment of liability in writing will save limitation and give a fresh period of limitation provided the conditions specified in that section are satisfied. Two main points of difference between an acknowledgment under S. 19 of the Limitation Act and one coming under this article are :

- (1) the acknowledgment under this article must be in respect of a *debt* while that under the Limitation Act may relate to *any* liability ;
- (2) the acknowledgment under this article must be intended to supply evidence of the debt. There is no such restriction in the case of an acknowledgment under the Limitation Act.

An acknowledgment coming under this article and therefore requiring to be stamped cannot be used even for the purpose of saving limitation. But an acknowledgment made only for the purpose of saving limitation and not for supplying evidence of the debt will not come under this article.

**14. Statement of account if acknowledgment.**—See Note 7.

**15. Description of stamp.**—See Appendix C.

2. ('94) 18 Bom 614 (616) (DB), *Fate Chand Harchand v. Kisan*.

3. ('47) 34 AIR 1947 Bom 337 (338) : ILR (1947), Bom 223, *Manilal v. Natwarlal*.

('19) 6 AIR 1919 Nag 141 (142) : 50 Ind Cas 781, *Sitaram v. Thakurdas*.

Also see S. 2(23) Note 20 and S. 35 Notes 8, 21

4. ('30) 17 AIR 1930 Lah 177 (178) : 119 Ind Cas 417, *Ram Dittamal v. Kesardas*.

5. ('06) 33 Cal 1047 (1058) : 2 Nag L R 130 : 33 Ind Cas 165 (PC), *Maniram Seth v. Seth Rupchand*.

Also see Note 8.

6. ('19) 6 AIR 1919 Nag 141 (142) : 50 Ind Cas 781, *Sitaram v. Thakurdas*.

7. ('74) 1874 Pun Re No. 43 page 166 (166) (DB), *Devi Ditta v. Mian Singh*.



2. \***ADMINISTRATION-BOND**, including a bond given under section 256 of the Indian Succession Act, 1865, section 6 of the Government Savings Banks Act, 1873, section 78 of the Probate and Administration Act, 1881, or section 9 or section 10 of the Succession Certificate Act, 1889,—

(a) where the amount does not exceed Rs. 1,000 ;

The same duty as  
a Bond (No. 15)  
for such amount.

(b) in any other case . . . . . Five rupees.

#### Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 2.

**BIHAR** See Bihar Sch. IA, Art. 2.

#### BOMBAY

(i) In column 2 of clause (b) *substitute* the words “ten rupees” for the words “five rupees.”—*Bombay Act II of 1932, Pt. VI, S. 15 (5) (b).* [1-4-1932.]

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See Central Provinces Sch. IA, Art. 2.

**MADRAS** See Madras Sch. IA, Art. 1A.

**ORISSA** See Orissa Sch. IA, Art. 2.

**PUNJAB** See Punjab Sch. IA, Art. 2.

**SIND** (i) Same as that of Bombay (i).—*Sind Act I of 1938, S. 2.* [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments (Sind.)

**UNITED PROVINCES** See United Provinces Sch. IA, Art. 2.

**WEST PUNJAB** See West Punj. Sch. IA, Art. 2.

1. **Legislative changes.**—Under the schedule to the Succession Act of 1865 and also under Art. 16, Sch. II of the Court-fees Act, 1870, the duty payable on an administration-bond was a fixed one. Then came the Stamp Act, 1879, which by Sch. I, Art. 2 provided for the levy of an *ad valorem* stamp duty on an administration-bond. Thus, both the Court-fees Act and the Stamp Act provided for the levy of duty on an administration-bond and this gave rise to a question whether such bond was liable to duty both under the Court-fees Act and the Stamp Act or only under the latter one. In *Kulwanta v. Mahabir Prasad*,<sup>1</sup> it was held that such a bond was liable to be stamped both under the Court-fees Act and the Stamp Act; while in *In the goods of F. M. Troward*,<sup>2</sup> it was held that the Stamp Act of 1879 being the later Act and inconsistent with the provision in Art. 16, Sch. II of the Court-fees Act of 1870, must be taken to have repealed the said provision of the Court-fees Act by necessary implication, and that such a bond was liable to be stamped *only* under Art. 2, Sch. I of the Stamp Act. This conflict was removed by the Probate and Administration Act, VI of 1889, which repealed Art. 16 of Sch. II of the Court-fees Act. Hence, an administration-bond is now liable to be stamped only under the Stamp Act.

The Succession Act of 1865, the Probate and Administration Act of 1881 and the Succession Certificate Act of 1889 which are mentioned in the body of this article have all been repealed and replaced by the Succession Act of 1925. Section 291 of this Act corresponds with S. 256 of the Succession Act of 1865 and S. 78 of the

\*[1879—Art.2]

Article 2—NOTE 1  
1. ('88) 11 All 16 ('7) : 1888 All W N 281 (FB).

2. ('79) 1879 Pun Re No. 165 page 478 (479).



Probate and Administration Act of 1881 ; while Ss. 375 and 376 of the present Act correspond with Ss. 9 and 10 respectively of the Succession Certificate Act of 1889.

**2. Administration bond.**—An administration-bond is a bond given by a person securing the due administration of property entrusted to him by an order of the Court.<sup>1</sup>

An administration-bond is quite different from letters of administration. The former is given by an administrator to the Judge of the District Court upon the grant of the letters of administration, while the latter are granted by the Judge to the administrator. Moreover, administration-bond is chargeable under the Stamp Act, while letters of administration are liable to court-fee stamps under Art. 11, Sch. I of the Court-fees Act.

**3. Description of stamp.**—See Appendix C.

**\*3. ADOPTION-DEED**, that is to say, any instrument | **Ten rupees.**  
(other than a will) recording an adoption or conferring  
or purporting to confer an authority to adopt.

#### Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 3.

**BIHAR** See Bihar Sch. IA, Art. 3.

**BOMBAY**

(i) In column 2 of Art. 3 substitute the words “twenty rupees” for the words “ten rupees.”—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (b).* [1-4-1932.]

(ii) See also Note given under Art. 1, Provincial Amendments—*Bombay*.

**CENTRAL PROVINCES** See C. P. Sch. IA, Art. 3.

**MADRAS** See Madras Sch. IA, Art. 2.

**ORISSA** See Orissa Sch. IA, Art. 3.

**PUNJAB** See Punjab Sch. IA, Art. 3.

**SIND**

(i) Same as that of Bombay (i)—*Sind Act I of 1938.* [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments.—*Sind*.

**UNITED PROVINCES** See U. P. Sch. IA, Art. 2.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 3.

**1. Legislative changes.**—The corresponding article in the Stamp Act of 1879, namely Art. 38, provided stamp duty only for an instrument conferring or purporting to confer an authority to adopt.<sup>1</sup> The present article is wider: it provides duty also for instruments “recording an adoption.”

**2. Adoption-deed—Meaning of.**—The expression “adoption-deed” in this article is used in a special sense as including not only an instrument recording an adoption but also one conferring or purporting to confer an authority to adopt.

The word “recording” is used here to denote committing to writing as authentic evidence of an adoption evidence which may be resorted to in case of dispute. It is

\* [1879—Art. 38 ; 1869—Sch. II, Art. 31.]

#### NOTE 2

1. ('34) Pun S M, 1934, Notes on Stamp Act, Chapter 3, page 23.

#### Article 3—NOTE 1

1. See the following cases decided under the Stamp Act of 1879, S. 38.

'89) 13 Bom 280 (281), *In the matter of Ambai*. (Instrument recording adoption not liable to stamp duty.)

('89) 13 Bom 281 (285). *In the matter of Hanmapa*. (Instrument by natural parents of boy giving consent to adoption not liable to stamp duty.)



the purpose of the instrument that has to be looked to in each case.<sup>1</sup> Mere *incidental* mention in an instrument of the fact of adoption does not make it an adoption-deed. Nor does the fact that the executant *describes* it as an adoption-deed, make it so.<sup>2</sup>

It is not necessary that an adoption and the record thereof should be contemporaneous ; the record may be made long after the adoption.<sup>3</sup>

A Hindu widow executed a document recording that she had adopted a son, and stating that the property in her enjoyment should be inherited and enjoyed by the adopted son. The executant was to manage the property during the minority of the son and, if after the latter attained majority, they did not agree, a portion of the property was to be allotted to him for separate enjoyment during the executant's lifetime. The Madras Board of Revenue ruled that the document fell within this article and that the provision as to the transfer of property to the adopted son in case of disagreement being incidental to adoption was not liable to additional duty.<sup>4</sup>

An instrument conferring an authority to adopt refers to an instrument whereby a person authorises another to adopt a son to the former, (e.g.) the authority of a Hindu husband to his wife to adopt a son to him after his death. A document whereby the natural parents of a boy *consent* to his being adopted by another is not an instrument conferring an authority to adopt.<sup>5</sup>

A *will* is expressly excluded from the description of instrument covered by this article.

3. Description of stamp.—See Appendix C.

ADVOCATE, See Entry as an Advocate (No. 30).

*4. AFFIDAVIT, including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.	One rupee.
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\* [1879—Art. 3 ; 1869—Sch. II Art. 14 ; 1862—Sch. A Art. 8 ; 1860—Sch. A Art. 2.]

#### NOTE 2

1. ('32) 19 AIR 1932 Lah 118 (119) : 13 Lah 270 : 135 Ind Cas 193 (SB), *Labh Singh v. Mehr Singh*. (True nature of document is to be decided with reference to contents and to intention of parties to be gathered therefrom.)

('33) Mad S M, p. 68 (Citing, B. P. 845-R., Mis., 18th April 1903—C, a widow, and A came to an agreement that C should adopt A's minor son B and on one and the same day each executed a document in favour of the other. The document executed by A, contained *inter alia* the following terms:—'You in accordance with your husband's permission having consented to adopt a son and asked me about it, I have given my approval. I accordingly bestow my son B in adoption.'—The document executed by C recited the following:—'I, in accordance with my husband's permission, have consented to adopt a son and asked you about the same. You have consented to give your son B in adoption to me, and I am ready to take him in adoption'—Held that the document executed by C was an adoption-deed and that the one executed by A was its counterpart.)

2. ('32) 19 AIR 1932 Lah 118 (119, 120) : 135 Ind Cas 193 (SB), *Labh Singh v. Mehr Singh*. (The document which began by reciting the *factum* of adoption went on to say that no document was executed at the time or subsequently and therefore that the said document was being executed later to affirm the adoption. Then followed a recital of the consequences of the adoption and the document wound up by saying "hence this deed of adoption was executed." It also contained directions regarding the performance of the executant's obsequies, etc.—Held that the document was 'recording' and adoption and not a will and that it fell under Art. 3. Meaning of the word 'recording' considered.)

3. ('32) 19 AIR 1932 Lah 118 (120) : 13 Lah 270 : 135 Ind Cas 193, *Labh Singh v. Mehr Singh*.

4. ('33) Mad S M, p. 68. (Citing B. P. 1301-R., Mis. 28th May 1902.)

5. ('89) 13 Bom 281 (285), *In the matter of Hanmapa*.

('40) Bihar S M, p. 146. (Citing Board's file 161 of 1910)

('31) Beng S M, Vol I p. 59. (Citing Board's file 161 of 1910.)



## Exemptions.

Affidavit or declaration in writing when made—

<sup>a</sup>[(a) as a condition of enrolment under the Indian Army Act, 1911 : <sup>b</sup>(or the Indian Air Force Act, 1932) ;]

(b) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or

(c) for the sole purpose of enabling any person to receive any pension or charitable allowance.

a. This clause was substituted for the original cl. (a) by S. 2 and Sch. I of the Repealing and Amending Act, 1928 (XVIII of 1928). The old cl. (a) ran as follows : “ (a) as a condition of enlistment under the Indian Articles of War ;”

b. Inserted by S. 130 and Schedule of the Indian Air Force Act, 1932 (XIV of 1932).

## Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 4.

**BIHAR** See Bihar Sch. IA, Art. 4.

**BOMBAY**

(i) In column 2 of Art. 4 substitute the words “two rupees” for the words “one rupee.”—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (b).* [1-4-1932]

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See C. P. Sch. IA, Art. 4.

**MADRAS** See Madras Sch. IA, Art. 3.

**ORISSA** See Orissa Sch. IA, Art. 4.

**PUNJAB** See Punjab Sch. IA, Art. 4.

**SIND**

(i) Same as that of Bombay (i)—*Sind Act I of 1938.* [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments, (Sind.)

**UNITED PROVINCES** See U. P. Sch. IA, Art. 4.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 4.

## Reductions and Remissions.

For reductions and remissions under this article see Appendix D.

1. Scope of the article.—This article prescribes stamp duty for an affidavit. Wharton, in his *L w Lexicon*<sup>1</sup> defines an affidavit as a written statement sworn before a person having authority to administer an oath. The General Clauses Act (X of 1897), S. 3 (3) defines an affidavit as follows : “ ‘Affidavit’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.” The definition given in this article is the same as the one given in the General Clauses Act. It is wider than the definition given by Wharton inasmuch as it includes affirmation and declaration in the case of persons allowed by law to affirm or declare instead of swearing. Section 6 of the Oaths Act (X of 1873) mentions persons who are allowed to make an affirmation instead of taking an oath. Section 1 of the English Oaths Act, 1888 (51 & 52 Vict. Ch. 46) also permits certain persons to make a solemn affirmation instead of taking an oath.

\* [1879—Art. 3 ; 1869—Sch. II Art. 14; 1862—Sch. A Art. 8 ; 1860—Sch. A Art. 2.]



The article presupposes that the affidavit, affirmation or declaration has to be made *before a person having an authority to administer an oath*.<sup>2</sup> In the corresponding Art. 3, Sch. I of Act 1 of 1879 this was expressly made clear. The article reads as follows: "Affidavit or declaration in writing on oath or affirmation made before a person authorised by law to administer an oath." Section 4 of the Oaths Act (X of 1873) mentions the Courts and persons authorised to administer oaths and affirmations. It has been held that a declaration required by R. 10 (2) of the Berar Electoral Rules is not an affidavit within the meaning of this article as it is not required to be made before a person having authority to administer an oath or affirmation.<sup>3</sup>

For further information as to the essentials of an affidavit see A. I. R. Commentaries on the Civil Procedure Code, 4th (1944) Edn., O. 19 R. 1 and the under-mentioned case.<sup>4</sup>

2. **Exemption (b).**—An affidavit made for the immediate purpose of being filed or used in any Court or before an officer of any Court is exempted from stamp duty. The word "immediate" refers to the purpose and not to time<sup>1a</sup>. But it has been held that the word "immediate" must be understood as allowing a reasonable time. "The test is whether, under the circumstances, there was such unreasonable delay as would be inconsistent with what is meant by 'immediate.'"<sup>1</sup> Where an affidavit required to be filed in the Court at Karwar was made before the clerk of the Court at Sirsi it was held that the mere fact that it suited the convenience of the party to make the affidavit at Sirsi, instead of going for that purpose to the Court at Karwar where he proposed to file it did not take the case out of the purview of the exemption.<sup>2</sup>

Where an affidavit was sworn in Bombay on 24-4-1942, for the purpose of being filed in a Court at Meerut in connection with a pending proceeding and it was actually filed only on 12-5-1942, it was held that the affidavit did not require any stamp as it could not be said that it was not sworn for immediate use in a Court of Law.<sup>2a</sup>

The exemption will not apply to an affidavit made for the purpose of being filed or used before an officer of the Customs, Income-tax or Salt Department as the office of the Customs Officer, Income-tax Officer or a Salt Officer cannot be described as a Revenue Court.<sup>3</sup>

2. ('21) 60 Ind Cas 870 (876) (Nag), *Sadasheo Waman v. R. V. Mahajani*.

3. ('21) 60 Ind Cas 870 (876) (Nag), *Sadasheo Waman v. R. V. Mahajani*.

4. ('1827) 130 E. R. 742 (743) : 5 L J (OS) C. P. 149, *Dunn v. Lowe*. (Statement in the margin of replevin bond without jurat made not as attesting the fact in the bond but as a minute or memorandum for satisfaction of undersheriff held not to be an affidavit so as to require an affidavit stamp.)

#### NOTE 2

('47) 34 AIR 1947 All 37 (37) : ILR (1946) All 732 : 229 Ind Cas 561, (FB), *Siri Kishandas v. Mohd. Nazir*.

1.†('88) 12 Bom 276 (277) (FB), *The application of Sheshamma*. (An affidavit made in a subordinate Judge's Court for the purpose of being filed in the District Court, and so filed within a reasonable time is exempt from stamp duty under Act I of 1879, Sch. II (1) (b). Remarks on meaning of "immediate purpose.")

[See also ('06) 30 Bom 275 (284) : 7 Bom

L R 697, *In re Land Acquisition Act*. (Where a statute or a written contract provided that a certain thing shall be done immediately, we must, in construing that word, have regard to the object of the statute or contract as the case may be, to the position of the parties and the purpose for which the Legislature or the parties intend that it shall be done immediately.)

(1868) 3 C P 607 (611) : 37 L J C P 301 : 18 L T 722 : 16 W R (Eng) 976, *Forsdike v. Stone*. (Followed in 12 Bom 276.)

(1913) 3 K B 34 (37) : 82 L J K B 843 : 108 L T 941, *Barker v. Lewis & Peat*. (The word 'immediately' has been construed and may be construed to mean as immediately as the circumstances permit.)

2. ('88) 12 Bom 276 (277) (FB), *The application of Sheshamma*.

('47) 34 AIR 1947 All 37 (37) : ILR (1946) All 732 : 229 Ind Cas 561, (FB), *Siri Kishandas v. Mohd. Nazir*.

3. ('40) Bihar S M, p. 147.



Under the Court-fees Act also no court-fee is payable on an affidavit filed in Court but under the *rules* framed by the High Courts a certain fee is charged for administering the oath or affirmation to the deponent and the fee is to be paid by means of court-fee stamp affixed to the affidavit<sup>4</sup>. In the undermentioned Calcutta case<sup>5</sup> an affidavit was filed in a criminal case. The affidavit was stamped with a non-judicial stamp. It was held that according to the General Rules and Circular Orders (criminal) the stamp required was a *court-fee stamp* and not a non-judicial stamp and therefore the affidavit was inadmissible in evidence.

3. Description of stamp.—See Appendix C.

**\*5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT—**

- (a) if relating to the sale of a bill of exchange ;
- (b) if relating to the sale of a Government security or share in an incorporated company or other body corporate ;

Two annas.

Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share.

- (c) if not otherwise provided for . . . . .

Eight annas.

*Exemptions.*

Agreement or Memorandum of agreement—

- (a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No. 43;
- (b) made in the form of tenders to the <sup>b</sup>[Central Government] for or relating to any loan ;
- (c) made under the European Vagrancy Act, 1874, section 17.

a. This Article was *substituted* for the original Article by S. 3 (1) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

b. *Substituted* for the words "Government of India" by A. O.

**Provincial Amendments.**

**BENGAL** See Bengal Sch. IA, Art. 5.

**BIHAR** See Bihar Sch. IA, Art. 5.

**BOMBAY**

- (i) *Substitute* the following, namely—

**"5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT—**

- (a) if relating to the sale of a bill of exchange. . . . .
- (aa) <sup>a</sup>[if relating to the purchase or sale] of a Government security.

Four annas.

Subject to a maximum of twenty rupees, two annas for every Rs. 10,000 or part thereof of the value of the security <sup>b</sup>[at the time of its purchase or sale, as the case may be.]

\* [1879—Art. 5 ; 1869—Sch. II Arts. 3, 11 ; 1862—Sch. A, Arts. 1, 2, 4 to 7 ; 1860—Sch. A, Art. 1, 28.]

4. See Bengal Civil Rules and Orders, Vol. 1 page 284 ; C. P. Rules and Orders (1938) page 7 ; Bombay Civil Manual (1940) pages 9 and 129.  
See Section 4 Note 18 of the AIR commen-

taries on the Court-fees Act and the Suits Valuation Act, 1st (1944) Edn.  
5. ('31) 18 AIR 1931 Cal 344 (345) : 58 Cal 1211 : 131 I. C. 262 (DB), *Ambica Charandas v. Emperor*.



¶[(b)] if relating to the purchase or sale of shares, scrips, stocks, bonds, debentures, debenture stocks or any other marketable security of a like nature in or of any incorporate Company or other body corporate.	Two annas for every Rs. 2,500 or part thereof of the value of the security at the time of its purchase or sale as the case may be.]
¶[(bb)] if relating to the purchase or sale of cotton ..	Four annas for every unit of transaction or part thereof.]
¶[(bc)] if relating to the purchase or sale of bullion or specie .. .. .	(a) Two annas for every unit of 2,800 tolas of silver or part thereof; (b) Eight annas for every unit of 250 tolas of gold or part thereof; (c) Five annas for every unit of 250 Sovereigns or part thereof.]
(c) if not otherwise provided for	One rupee.

*Exemptions.*

Agreement or memorandum of agreement—

- (a) for or [relating to the purchase or sale] of goods or merchandise exclusively, not being §[an Agreement or Memorandum of Agreement chargeable under entry (bb)<sup>h</sup> [or entry (bc) of this Article or] a Note or Memorandum chargeable under No. 43 ;
- (b) made in the form of tenders to the Central Government for or relating to any loan ;
- (c) made under the European Vagrancy Act, 1874, S. 17 ;
- ¶[(d) made in respect of the purchase or sale of a Government security or of a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of any incorporate Company or other body corporate, <sup>i</sup>[or of cotton, or of bullion or specie, an entry relating to which is required to be made in a clearance list, described in Article 20A, 20B, or 20C, as the case may be.]

¶[*Explanation.*—For the purposes of this Article, unit of transaction means 50 bales of cotton, a bale of cotton being equal to the quantity of cotton weighing approximately 392 lbs.]

—*Bombay Act II of 1932, Pt. IV. S. 15 (5) (c). [1-4-1932.]*

- a. These words were *substituted* for the words “if relating to the sale” by S. 4 (2) (a) of Bombay Act VII of 1938. [31-3-1938].
- b. These words were *added* by S. 4 (2) (a) of Bombay Act VII of 1938. [31-3-1938].
- c. This entry was *substituted* by S. 4 (2) (b) of Bombay Act VII of 1938 [31-3-1938] for the original entry (b) which was as follows :—“(b) if relating to the sale of a share in an incorporated company or other body corporate—Two annas for every Rs. 5000 or part thereof of the value of the share.”
- d. Entry (bb) was *inserted* by Bombay Act XXIII of 1948, S. 12 (a) [31-3-1948].



## AGREEMENT

- e. Entry (bc) was *inserted* by Bombay Act. II of 1949, S. 7 (3) (a) (i) [1-4-1949].
- f. These words were *substituted* for the words "relating to the sale" by S. 4 (2) (c) of Bombay Act VII of 1938. [31-3-1938].
- g. These words, brackets and letters were *inserted* by Bombay Act XXIII of 1948, S. 12 (a). [31-3-1948.]
- h. *Inserted* by Bombay Act II of 1949, S. 7 (3) (a) (i). [1-4-1949].
- i. In exemptions entry (d) was *added* by S. 4 (2) (d) of Bombay Act VII of 1938. [31-3-1938].
- j. *Substituted* by Bombay Act II of 1949, S. 7 (3) (a) (i). [1-4-1949].
- k. Explanation was *added* by Bombay Act XXIII of 1948, S. 12 (a). [31-3-1948].

(i) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See C. P. Sch. IA, Art. 5.

**MADRAS** See Madras Sch. IA, Art. 4.

**ORISSA** See Orissa Sch. IA, Art. 5.

**PUNJAB** See Punjab Sch. IA, Art. 5.

**SIND** (i) *Substitute* the following, namely—

"5. AGREEMENT OR MEMORANDUM

OF AN AGREEMENT—

- (a) if relating to the sale of a bill of exchange ;
- (aa) if relating to the sale of a Government security ;
- (b) if relating to the sale of a share in an incorporated company or other body corporate ;
- (c) if not otherwise provided for.

Four annas.

Subject to a maximum of twenty rupees, two annas for every Rs. 10,000 or part thereof of the value of the security.

Two annas for every Rs. 5000 or part thereof of the value of the share.

One rupee."

*Exemptions.*

(Same as in the Central Act.)

—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (c)* [1-4-1932]  
and *Sind Act I of 1938* [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments—*Sind*.

**UNITED PROVINCES** See U. P. Sch. IA, Art. 5.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 5.

**Reductions and Remissions.**

For reductions and remissions under this article see Appendix D.



## Synopsis

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. Agreement or memorandum of agreement.</li> <li>2. Clause (b)—Agreement relating to sale of Government security or share in company.</li> <li>3. Agreements not otherwise provided for—Clause (c).</li> <li>4. Agreement contained in letters.</li> <li>5. Attestation.</li> <li>6. Bond and agreement.</li> <li>7. Agreement and promissory note.</li> <li>8. Agreement altering terms of prior instrument.</li> <li>9. Instrument containing several matters.</li> <li>10. Reference to arbitration.</li> <li>11. Contract of guarantee.</li> </ol> | <ol style="list-style-type: none"> <li>12. Compromise petition.</li> <li>13. Acknowledgment of debt coupled with promise to pay.</li> <li>14. Acknowledgment of debt with stipulation to pay interest.</li> <li>15. Agreement relating to deposit of the title deeds.</li> <li>16. Promise to pay time-barred debt.</li> <li>17. Agreement for or relating to sale of goods or merchandise (Exemption (a).)</li> <li>18. Attested agreement for sale of agricultural produce whether covered by Exemption (a). See Section 2 (5), Note 11.</li> <li>19. Description of stamp. See Appendix C.</li> </ol> |
|--|--|

1. **Agreement or memorandum of agreement.**—The word “agreement” in this article must be taken in the sense defined in S. 2 of the Contract Act.<sup>1</sup> According to this definition an “agreement” is equivalent to a “promise” and a “promise” denotes a proposal or offer which has been accepted. Thus, an “agreement” means a proposal which has been accepted by the person to whom it is made. It will be noted that “consideration” is not an essential element in an agreement though it is one in a ‘contract.’<sup>2</sup>

Under the Contract Act a contract may be oral or written. But unless an agreement is in writing it will not be liable to stamp duty.

But, in order to fall under this article, the instrument *need not* be one by which the parties *make* the agreement. If the instrument is of this description it will be an agreement in writing and will be chargeable with stamp duty under this article. But even where the instrument does not itself constitute the agreement between the parties, but is only a *memorandum* of an oral agreement already made, it is liable to duty under this article.<sup>3</sup> But a document which *merely recites* a past agreement will not be a “memorandum of agreement” within the meaning of this article. In order to constitute such memorandum, the object of the instrument must be looked at. If the intention of the parties is to place on record the terms of the contract between them so that the document should be the only appropriate evidence of the agreement and its terms, the document is a memorandum and liable as such to be stamped under this article.<sup>4</sup> But if the main purpose of the instrument is something else and it merely recites in an incidental manner, a contract already made between

## Article 5—NOTE 1

1. ('35) 22 AIR 1935 Lah 567 (568) : 17 Lah 1 : 158 Ind Cas 234 (SB), *Nanak Chand v. Fattu*.
2. ('32) 19 AIR 1932 Cal 720 (722) : 140 Ind Cas 263 (DB), *Saroj Bandhu v. Jnanada Sundari*. (Deed called *mashahara patra* executed by father in favour of his widowed daughter allowing her a monthly allowance of Rs. 10 and charging certain property with its payment held ‘an agreement’ within the meaning of the Contract Act.)
3. (1846) 153 E R 1101 (1102, 1106) : 16 L J Ex 18 : 8 L T (OS) 121, *Knight v. Barber*. (Held (Per Pollock C. B.) that it is a conclusion of law that where parties are making an agreement by parol, and subsequently reduce it into writing the writing constitutes the contract. When they discuss a ques-

tion in the morning and in the afternoon put down the result in writing the inference is that they mean to abide by what they have written.)

4. See (1814) 105 E R 446 (446) : 15 R R 304, *Ramshattom v. Mortley*. (A written paper, signed by the auctioneer, and delivered to the bidder, to whom lands were let by auction, containing the description of the lands, the term for which they are let to the bidder, and the rent payable, is such a memorandum of an agreement as requires a stamp.)
- (1814) 105 E R 442 (442) : 15 R R 302, *Ramshattom v. Tunbridge*. (A written paper, delivered by the auctioneer to the bidder, to whom the lands were let by auction, containing the description of the lands, the term for which they were let to the bidder, and rent payable,



the parties, it will not be a "memorandum of agreement" under this article,<sup>5</sup> [See Note 12.)

A "memorandum of agreement" under this article must be a document between party and party. In other words, it must be an instrument drawn between the parties to the agreement. Thus, a note made by one of the parties alone for his own remembrance will not be a "memorandum" within the meaning of this article. Similarly, when A acting as agent of B enters into a contract with C and sends a note of the transaction to B, the note is not a memorandum of agreement for the purpose of this article. The note is merely the agent's account to his principal.<sup>6</sup>

As said already, an "agreement" within the meaning of this article is an *accepted* proposal. Hence, an instrument which merely contains a proposal or offer to do or to abstain from doing something, is not an "agreement" within the meaning of this article.<sup>7</sup>

*A fortiori*, what is merely an invitation for offers will not be an agreement. Thus, quotation of prices has been held to be a mere invitation for offers and not an offer.<sup>8</sup> So also, a declaration as to one's intention which is not made with a view to obtain the *assent* of the person to whom it is made is not a proposal (see Contract Act S. 2 (a) ) and so there can be no question of such a declaration being an "agreement."<sup>9</sup>

but not signed by the auctioneer or any of the parties was held not to be such a minute of the agreement as was required to be stamped, pursuant to statute 48 Geo. III, Ch. 149, nor such a writing as would exclude parol evidence.)

5. (1846) 9 Q B 779 (791) : 16 L J Q B 5 : 115 E R 1475 : 8 L T (OS) 159, *Marshall v. Powell*.

6. (1824) 171 E R 1223 (1223, 1224) : 1 C & P 341 (343), *Josephs v. Pebrer*.

7. ('89) 13 Bom 669 (669) (FB), *Dhondbhat Narharbhat v. Atmaram Moreshwar*. (Letter requesting for loan).

('40) 27 AIR 1940 Mad 379 (382) : I L R (1940) Mad 487 : 188 Ind Cas 136 (FB), *Zamindar of Sivaganga v. Periasami Pillai*. (An undertaking by a tenant to accept a patta if a patta be drawn up in accordance with the terms contained in the consent statement signed by him, does not require stamping or registration, being merely an offer.)

('33) Mad S M, p. 73. (Citing B. P. 80/464, Mis. 21st April 1913. Application to Bank in prescribed form for loan, describing applicant's property, and encumbrances thereon and stating that he will not create further encumbrances till the loan for which he applied—Held this was only an offer.)

(1851) 90 R R 805 (807) : 20 L J Ex 361 (362) : 17 L T (OS) 231, *Clay v. Crofts*. (Prospectus issued by school master.)

(1850) 137 E R 1036 (1039) : 19 L J C P 321 : 15 L T (OS) 227, *Hudspeth v. Yarnold*. (Letter offering employment.)

(1849) 19 L J Ex 15 (19) : 4 Ex 681 : 14 L T

(OS) 224 : 154 E R 1388, *Moore v. Garwood*. (Counter-offer—Application for shares in company—Letter of allotment altering the terms—letter is only offer.)

(1847) 1 Ex 20 (25) : 16 L J Ex 173 : 74 R R 580 : 9 L T (OS) 177 : 154 E R 9. *Vollans v. Fletcher*. (Application for shares in company—Letter of allotment containing new term—Letter is mere offer and not agreement.)

(1856) 61 E R 1002 (1005) : 25 L J Ch 662 : 4 W R (Eng) 531 : 106 R R 416 : 27 L T (OS) 194, *Warner v. Willington*. (Offer to take up land on lease.)

(1819) 171 E R 710 (710) : 2 Stark 475 (476), *Penniford v. Hamilton*. (Brick layer's estimate of cost of building.)

(1843) 134 E R 560 (563) : 63 R R 279 : 12 L J C P 147, *Chanter v. Dickinson*.

8. ('20) 7 AIR 1920 Mad 177 (179) : 54 Ind Cas 550 (DB), *Mylappa Chettiar v. Aga Mirza Mahomed Sirazee*.

[See also (1816) 171 E R 531 (531) : 18 R R 809, *Edgar v. Blick*. (Prospectus containing terms on which plaintiff was willing to offer his services—Subsequent oral agreement based on such terms—Prospectus need not be stamped as an agreement—The prospectus is not evidence of the agreement itself, but had performed its office before the parol agreement was entered into.)

9. (1835) 46 R R 807 (807) : 1 Tyr & G 17] (17, 18), *Doe d. Wheble v. Fuller*. (A receipt for rent containing a proviso that the acceptance of the rent should not be a waiver of the previous notice to quit does not require an agreement stamp.)



An offer in writing may be accepted orally or by conduct without any writing and such acceptance will be sufficient to create a contract.<sup>10</sup> But the *document* will remain only an offer notwithstanding its acceptance. Hence, the document will not require a stamp under this article.<sup>11</sup> But there the document is an acceptance in writing of an oral proposal, the document will amount to an agreement in writing and will require to be stamped as such.<sup>12</sup>

The instrument must contain within its four corners, an agreement in order to come under this article.<sup>13</sup> Thus, it was held that the words "we approve of the written draft" written on the back of a draft agreement was not an agreement and did not require a stamp.<sup>14</sup>

Similarly, notice having been given to the plaintiff of a call on certain mining shares which he had transferred to the defendant, the plaintiff's attorney wrote to the defendant's attorney to inquire whether the defendant was desirous of avoiding a forfeiture of the shares by authorising the plaintiff to pay the amount of the call.

10. (1893) 1 Q B 256 (262) : 62 L J Q B 257 : 67 L T 837 : 41 W R (Eng) 210, *Carlill v. Carbolic Smoke Ball Co.* (Affirming (1892) 2 Q B 484.)

(1892) 2 Q B 484 (490) : 61 L J Q B 696, *Carlill v. Carbolic Smoke Ball Co.*

11. (1940) 27 AIR 1940 Mad 379 (382) : I L R (1940) Mad 487 : 188 Ind Cas 136 (FB), *Zamindar of Sivaganga v. Periasami Pillai*. (Document containing offer to accept patta drawn up on certain terms—Document does not require stamp and position is not altered by presentation of patta in accordance with the offer or the exchange of patta for *muchulka*.)

(1915) 2 AIR 1915 Mad 778 (779) : 38 Mad 349 : 20 Ind Cas 865 (FB), *Secretary to the Commissioner of Salt v. South India Bank, Ltd.* (1900) 23 Mad 156n : 7 Mad L Jour 220 (221) (DB), *Narayansami Mudaliar v. Lokambalammal*. (Letter asking for loan.)

(1892) 2 Q B 484 (490) : 61 L J Q B 696, *Carlill v. Carbolic Smoke Ball Co.* (Affirmed in (1893) 1 Q B 256.)

(1862) 176 E R 44 (44) : 3 F & F 97 (98), *Laing v. Smith*. (If after two parties have orally agreed to certain terms, one of them desires that they should be put into writing and the other writes them out in the form of a proposal, which is orally accepted, this, though necessary to be put in as a matter of evidence, does not require a stamp as an agreement.)

(1849) 154 E R 1269 1271 : 4 Ex 403 (407), *Chaplin v. Clarke*.

(1825) 107 E R 879 (881) : 3 L J (OS) K B 111, *Drant v. Brown*.

[But see (1817) 171 E R 650 (650) : 2 Stark 292 (293), *Williams v. Staughton*. (Prospectus issued by school-master—*Held*, it required stamp.)

(1866) 143 R R 797 (807) 1 Ex 342 : 35 L J Ex 218 : 15 L T 25 : 14 W R (Eng) 924, *Reuss v. Picksley*.

(1857) 140 E R 337 (345) : 29 L T (OS) 93 : 5 W R (Eng) 563 : 109 R R 611, *Smith v. Neale*. (A written proposal, containing the terms of a proposed contract, signed by the person to be bound and accepted by word of mouth by the person to whom it is made is a sufficient agreement in writing within S. 4 of the Statute of Frauds.)]

12. (1854) 139 E R 258 (259) : 23 L J C P 151, *Hegarty v. Milne*.

(1843) 134 E R 560 (563) : 12 L J C P 147 : 63 R R 279, *Chanter v. Dickinson*.

13. (1935) 22 AIR 1935 Lah 567 (568) : 17 Lah 1 : 158 Ind Cas 234 (SB), *Nanak Chand v. Fattu*. (Voucher given by buyer of goods on credit is not "agreement.")

(1892) 2 Q B 484 (490) : 61 L J Q B 696, *Carlill v. Carbolic Smoke Ball Co.* (Hawkins, J. :—The mere fact that a document may assist in proving a contract does not render it chargeable with stamp duty ; it is only so chargeable when the document amounts to an agreement of itself or to a memorandum of an agreement already made. Affirmed in (1893) 1 Q B 256.)

[See (1841) 151 E R 1099 (1100) : 10 L J Ex. 464, *Beeching v. West Brook*. (A stamp is not imposed by the Act upon every document which refers to, and so furnishes evidence to prove, an agreement ; it is required only on documents in which the parties put down the terms by which they intend to be mutually bound.)

[See however (1857) 157 E R 201 (202) : 26 L J Ex 416 : 29 L T (OS) 264 : 5 W R (Eng) 881 : 115 R R 651, *Glover v. Halkett*. (Although the writing may not be evidence of whole contract, yet if it is evidence of a material part and a necessary part in proof of it, it requires stamp as contract.)]

14. (1830) 172 E R 719 (719) : 4 C & P 312 312), *Doe d. Lambourn v. Pedgriph*.



The defendant's attorney wrote in reply authorising the plaintiff to pay the call. It was held that these letters did not require a stamp, as they merely amounted to a direction to pay from which the law implied a contract. The letters contained no contract nor were they evidence of a contract but only evidence of the fact out of which the contract resulted, namely, the direction to pay.<sup>15</sup>

On the same principle, a voucher given to a shopkeeper by a person buying on credit is not an "agreement" or memorandum of agreement.<sup>16</sup>

Where the statements in the document do not represent a *completed* agreement but only negotiations intended to lead up to the execution of a bond or other form of agreement, the document is not liable to be stamped as an agreement.<sup>17</sup> But where a document contains within itself a complete agreement it can be treated as such although it contains a provision for the execution of a formal document afterwards.<sup>18</sup>

An agreement between A and B under which A is bound to enter into an agreement with C in respect of a certain matter is also an "agreement."<sup>19</sup> In other words, the act promised to be done under an agreement may be the entering into an agreement with a third person.

But a statement made by A to B with reference to C will not amount to an "agreement" with C.<sup>20</sup>

**2. Clause (b)—Agreement relating to sale of Government security or share in company.**—It was held in the undermentioned case<sup>1</sup> that where an agreement for the sale of certain shares, was contained in a number of letters none of them required to be stamped under this clause because in such a case any one of them could not be regarded as containing a memorandum of the entire agreement. This was a decision with reference to Act I of 1879 which did not contain a provision corresponding to S. 35, Proviso (c). Under the present Act an agreement is liable to be stamped though contained in a series of letters. See Note 4.

By a document the executant purported to sell his interest in certain receipts for a company's shares purchased by him from the creditors of that company; he passed the document merely as a receipt acknowledging payment to him of some money by the intended vendee undertaking that a formal document of sale shall be executed when desired by the vendee. It was held that the property in the receipts

15. (1836) 150 E R 333 (333) : 5 L J Ex :90, *Parker v. Dubois*.

16. ('35) 22 AIR 1935 Lah 567 568) : 17 Lah T : 158 Ind Cas 234 (SB), *Nanak Chand v. Fattu*.

[See ('20) 7 AIR 1920 Lah 175 (175) : 56 Ind Cas 117, *Hari Singh v. Fazal*. (Book entry for Rs. 300—Price of wheat containing a promise to pay at a certain rate of interest and attested by two witnesses—Held, a bond.)]

17. (18) 5 AIR 1918 Cal 495 (496) : 40 Ind Cas 725 (DB), *Rajeswar Bagchi v. Emperor*.

18. ('93) 1893 Bom P J 157 (DB), *Dwarkadas v. Shekh Hamidali*.

[See also ('90) 17 Cal 548 (556), *A. C. Byod v. Kreig*. (Correspondence containing complete agreement independently of subsequent draft which the other party refuses to

execute.—The correspondence must be stamped.)]

19. (1887) 36 Ch D 695 (698, 699) : 57 L J Ch 149 : 58 L T 22 : 36 W R (Eng) 267, *Foster v. Wheeler*. (Affirmed in (1888) 38 Ch D 130.)

20. (1838) 173 E R 682 (682) : 8 C & P 704 (705), *Frazer v. Bunn*. (A letter written by a proprietor of a theatre, to a third person, saying, "F must be satisfied with his present salary until I know what turn the season takes" is not an agreement and does not require a stamp. It is nothing at all between the parties; it is an admission that the proprietor makes to a third person that F was in his service.)

NOTE 2

1. ('90) 13 Mad 255 (263) (DB), *Ramier v. Gould*.



not having been intended to pass, the document was merely an agreement liable to a duty of eight annas, (i.e., under clause (c) and not under this clause.)<sup>2</sup>

3. **Agreements not otherwise provided for—Clause (c).**—This article is a residuary article dealing with agreements which are not otherwise provided for. Thus, a bond, promissory note, apprenticeship-deed, etc., are all agreements but, being specially provided for otherwise, are not within the scope of this article. Hence, the principle contained in S. 6 that where a document falls under two or more articles, providing for different amounts of duty, the highest amount chargeable is to be paid, does not apply in such cases. Where, however, one and the same instrument comprises an agreement such as will come under this article as well as some other matter and the two matters are distinct the instrument will be chargeable with the aggregate of the duties payable under this article and under the other article or articles that may apply to the instrument.

It is a question of construction in each case whether an instrument is an agreement falling under cl. (c) of this article or some other instrument for the purpose of stamp duty.

#### *Illustrative cases.*

##### **Agreement and mortgage.**

1. An agreement entered into between a mortgagee and mortgagor under which the mortgagee agrees to an extension of the period of redemption and the mortgagor agrees to pay interest at an enhanced rate is not a fresh mortgage but an agreement falling under clause (c).<sup>1</sup>

2. In the undermentioned case<sup>2</sup> the instrument was held to comprise three distinct matters, viz., a mortgage, a power-of-attorney and an agreement falling under cl. (c).

3. A document under which a contractor doing work for the Government agreed that a percentage of the moneys that may become payable to him from time to time may be retained by the Executive Engineer to cover compensation for default on the contractor's part and as security for the proper performance of the contract was held to amount to an agreement under this clause and not a mortgage.<sup>3</sup>

4. Where a muchalka executed by an abkari licensee stated that the executant agreed to all the conditions in the licence, one of which was that as security for the due performance of the contract the licensee *shall* deposit with the Collector a sum equal to three months' rental, it was held by the Madras High Court that the muchalka was required to be stamped under this clause and not as a mortgage be-

2. ('90) 14 Bom 316 (317) (FB), *Heptula Shekh Adam & Co. v. Esaf Ali Abdul Ali*.  
NOTE 3

1. ('25) 12 AIR 1925 All 501 (502) : 47 All 310 : 86 Ind Cas 1027 (FB), *Indra Rameshwar Prasad*. Also see S. 2 17) Note 8

2. ('45) 32 AIR 1945 Lah 69 (72, 74) : ILR (1946) Lah 185 (SB), *Miran Bakhsh v. Emperor*. (Document described as power-of-attorney executed by Government contractors in favour of Bank—Bank to finance contracts with Government and to advance executants money against supply bills—Bank to have charge over cheques received in payment of bills for payments from Government—Remittances to be made by the

Government direct to Bank—Bank also appointed as executants' lawful attorney—Instrument held to be power-of-attorney, mortgage so far as the amounts due to the Government at the time of the execution of instrument was concerned, and agreement so far as the amounts which might become due in future were concerned.)

3. ('84) 7 Mad 209 (210) (SB), *Reference under Stamp Act S. 46*. (The contract is not a mortgage of the percentage of which present payment is postponed; for the property remains in the Government till the sum necessary to pay the amount retained is paid to the contractor or at least severed from bulk and assigned for such payment.)



cause neither the licence nor the muchalka created an interest in the deposit in favour of the Government.<sup>3a</sup> But, where an agreement between the Secretary of State and a salt contractor stated that the contractor *had* deposited certain promissory notes to secure the due performance of his contract the same High Court held in the undermentioned case<sup>3b</sup> that the document required to be stamped as a mortgage-deed.

5. A document by which a person, in consideration of a sum of money advanced by another, binds himself to perform agricultural labour is an *agreement* and not a mortgage-deed.<sup>4</sup>

6. By a document A bound himself and his posterity, on the security of some immovable property, for the annual payment of Rs. 21-4-0 and 3 *hadus* of cocoanut oil. It was held by the Madras Board of Revenue that it was a mortgage-deed for Rs. 725, being the value of twenty years' payment of oil at Rs. 15, and Rs. 21-4-0 in cash per annum and was chargeable under Art. 40 (b) and not under this article.<sup>5</sup>

7. See the undermentioned case.<sup>5a</sup>

#### Agreement and lease.

1. A lease is defined in S. 2 (16). Even if a document purporting to be a lease but not reserving any rent is held to fall within this definition no stamp duty is provided for such an instrument under Art. 35. It is, therefore, chargeable under this clause as an agreement not otherwise provided for.<sup>6</sup>

2. The definition in S. 2 (16) is confined to a lease of *immovable* property. A lease of *movable* property would not come under that definition and would be chargeable under this clause.<sup>7</sup>

3a. ('92) 15 Mad 134 (135) (SB), *Reference under Stamp Act, S. 46.*

Also see S. 2 (17) Note 4.

3b. ('88) 11 Mad 39 (40) (SB), *Reference under Stamp Act, S. 46.*

Also see S. 2 (17) Note 23 and S. 5 Note 5.

4. ('33) Mad S M p. 69. (Citing B P 424, 11th March 1881. A received an advance of Rs. 29 from B and in lieu of the interest due thereon and in consideration of certain grain fees promised by B, executed a document binding himself to perform agricultural labour, and in case he quitted his service certain immovable property belonging to him was made liable for the realization of the advance. Held that this document was an agreement requiring to be stamped under Article 5 (c), Schedule I of the Stamp Act, as regards the work to be performed.)

5. ('33) Mad S M, p. 122. (Citing B P 201-R., Mis., 30th, January 1908.)

5a. ('46) 33 AIR 1946 Mad 437 (441) : ILR. (1947) Mad 141 : 227 Ind Cas 360, *Sethuraman v. Ramanathan*. (Mortgage for Rs. 10,000—Mortgage deed providing for further advances on same security—Accordingly Rs. 7,000 advanced from time to time—Document adjudged by Collector under S. 31 as a mortgage and an agreement falling under Sch. IA, Act 33 and 4 (c) (Mad) respectively—Collector certifying Document as duly stamped on payment of deficit duty

and penalty—Suit on mortgage—Certificate of collector excludes operation of S. 26).

('33) Mad S M, p. 70. (Citing B P 1375, 8th May 1885. A executed to B a document mortgaging his land in consideration of a certain sum received which he bound himself to pay after the expiry of the fixed period, the possession being with B. The document further provided that if A failed to return the money borrowed, he would retain it, buying paddy at the cheapest rate and selling it with B's consent. Of the profits thus realized. A was to pay one-half plus interest at 12 per cent. on the capital laid out. Held that the document required to be stamped both as a mortgage-deed (Article 40 (b)) and as an agreement not otherwise provided for, (Article 5 (c) of the First Schedule.)

6. ('01) 3 Bom L R 401 (402) (FB), *In re Narayan Das Dwarmal*.

7. ('14) 1 AIR 1914 All 259 (259) : 36 All 11 : 21 Ind Cas 601 (FB), *Mutsaddi Lal v. Harkesh*. (An entry in a book (a register of sums payable with respect to the letting out of machinery for pressing sugarcane, etc.) kept by the owner of the machinery to the effect that certain machinery was leased in consideration of a rent to be paid in a certain month and in default, to pay interest at 2 per cent. per mensem.)

('34) Pun S M, Part I-B, Ch. 3, Para 2 (xi).



3. A mere licence must be distinguished from a lease. (See Note 4 on S. 2 (16).) A licence does not become a lease merely because a rental is reserved. A licence is chargeable as an agreement under this clause.<sup>8</sup>

4. Article 35 provides for duty on an agreement to lease. But the agreement to lease, in order to be chargeable under that article, must be an actual *demise* (see Note 3 on S. 2 (16).) An agreement to lease land under certain contingencies which may or may not happen does not amount to an actual demise. Such an agreement is, therefore, not chargeable under Art. 35, but as a simple agreement under this clause.<sup>9</sup>

5. Where by a rent note A agreed to take for a certain period from B a certain pasture ground for grazing a certain number of cattle at a certain consideration it was held that the agreement was not a lease within the meaning of S. 3 (12) of Act I of 1879, as by the agreement B did not part with the possession of land; nor did A undertake to cultivate, occupy or pay or deliver rent for the land or the grass; but the document was chargeable under this clause.<sup>10</sup>

6. See also the undermentioned cases.<sup>11</sup>

8. ('25) 12 AIR 1925 Mad 434 (435): 48 Mad 368: 86 Ind Cas 688 (FB), *Board of Revenue v. S. I. Ry. Co.* (Documents entered into between a railway company and certain coal merchants, by which the latter are given leave to stock coal on small plots of land in station yards are not required to be stamped as leases, but are mere licences which fall within the description of agreements not otherwise provided for under Article 5 (c).)

('33) Mad S M, p. 73. (Citing B P 105/1228-R., Mis., 23rd May 1902: G. O. No. 1323, Revenue, 8th May 1914. Prospecting licences granted under Board's Standing Order No. 25 (L. R., Sett, and Mis.) are not leases for purposes of the definition in S. 2 (16) of the Stamp Act.)

(31) Beng S M, Vol. I, page 60, (*Exploring and prospecting licences* are not leases for purposes of the definition in S. 2, sub-s. (16), of the Indian Stamp Act, II of 1899.) [See also ('33) Mad S M, p. 75. (Citing B P 1863-R., Mis., 19th December 1908. By a document A agreed to allow B to prospect for minerals on some of A's lands and, if the operations were successful, to grant a mining lease for a period of 30 years. In return B agreed (1) to lend Rs. 50,000 to A within four months from the date of the agreement, the amount to be repayable at interest within a certain period; (2) to give a bonus of Rs. 20,000 when the mining lease was registered, in case B decided to take out a mining lease; (3) to advance a loan of about a lakh of rupees on a separate mortgage bond, after the execution of the mining lease; and (4) to pay royalty, etc., in case a mining lease was taken out. The Board held that the document was an agreement chargeable under Article 5 (c) and not a bond or agreement to lease.]

9. ('28) 15 AIR 1928 Bom 553 (555, 556):

53 Bom 1: 112 Ind Cas 758 (DB), *In re Maneklal Manilal*.

[See also ('23) 10 AIR 1923 Cal 524 (526): 72 Ind Cas 98 (DB), *Bijoi Chandra Singh v. Howrah Amla Light Ry. Co. Ltd.* (A letter was as follows: 'I beg to inform you that I shall be glad to do the necessary electric wiring on your assuring me that you will continue to be tenant for a further period of three years after the expiration of the lease. I require this assurance, as on the present terms of the lease, I have not to do any repairs or works in the building as long as the current agreement lasts.' To this letter the reply was as follows: 'I am prepared to continue the lease for three years and would like sanction at once to start work on the electric-wiring, as at present it is unsafe'—It was assumed that the effect of the correspondence was to create a present demise subject to the reservation that the commencement of the lease was postponed till the date of expiry of the term then current.)]

10. ('89) 13 Bom 87 (89, 90) (FB), *In re Hormusji Irani*. (Nanabhai Haridas J. dissentiente.)

11. (1834) 111 E R 81 (83): 2 Ad & E 2 10 (215), *Rex v. Martin*. (To prove a settlement by renting a tenement an unstamped book entry to the following effect was produced: 'Agreed with T S to have the house in P now occupied by W at £ 11 per annum, to be paid quarterly, quarter's notice to be given on either side; to leave it in same repair as he found it' Held that the entry was neither a lease nor an agreement to lease. It was merely a memorandum and did not require any stamp.)

('33) Mad S M, p. 72. (Citing B P 535 R., Mis., 15th March 1904—Certain lessees of Tarla Zamindari executed a document in favour of the zamindar agreeing to pay for



**Agreement and conveyance.**

1. Where a document recited that in consideration of certain debts certain paddy land was delivered to the creditor but, apart from the use of the word "agreement" in two places, showed that the transaction had not passed the stage of a contract for sale and contained a promise to perfect the title by executing a registered deed of conveyance later, it was held that the document was chargeable under this article and not under Art. 23.<sup>12</sup>

2. Where by an instrument a mortgagor relinquished his title to the mortgaged property in favour of the mortgagee (in consideration of the mortgage-money and an additional sum of Rs. 50) and also agreed to pay the Government assessment until the land was transferred in the Collector's books to the mortgagee's name, it was held that the document was a conveyance and also *an agreement to pay the assessment* and was chargeable both in respect of the conveyance and the agreement.<sup>13</sup> But where a purchaser in auction of the ryotwari rights in Government waste lands executed a document in favour of the Government, undertaking to pay the purchase-money in nine equal instalments and the lands were to remain the property of the Government until the last instalment was paid; and where the purchaser was to pay the assessment and cess as they fell due and if he failed to pay any instalment or the assessment or cess the Government had the right to re-enter upon the lands at once without paying any compensation, all previous instalments paid being forfeited to the Government, it was held by the Madras Board of Revenue that the document was chargeable under this clause.<sup>14</sup>

**Agreement and security-bond.**

1. A combination of *nokarnama* (agreement of service) and security-bond by the surety for the servant has been held chargeable under this article for *nokarnama* and under Art. 57 for the security-bond.<sup>15</sup>

2. See the undermentioned case.<sup>16-17</sup>

**Agreement and partition.**

1. As seen in Note 5 on S. 2 (15) the definition of "instrument of partition" expressly includes an instrument whereby co-owners *agree* to divide property and do not actually divide it by metes and bounds. But the agreement must be for immediate partition. An agreement to divide property *in future* is chargeable under this clause and not under Art. 45.<sup>18</sup> Thus a partition list which does not

the jeroyati lands leased to them a rate of rent higher than that decreed by the District Court of Ganjam—*Held* that the document was chargeable as an agreement under Article 5 (c).)

(‘33) Mad S M, p. 73. (Citing G O 1227, Revenue, 27th April 1917; B P 795 R., Mis., 26th May 1917. Agreements with forest Panchayatdars in the form printed in G. O. No. 1801, Revenue, dated the 8th August 1916, inasmuch as they do not confer on the Panchayat any right to exclusive possession, are not leases and are liable to stamp-duty under Article 5 (c) of Schedule I.)

12. (‘31) 18 AIR 1931 Rang 193 (194): 131 Ind Cas 503, *Ma Thin Za v. Veera Kalai*.

13. (‘91) 15 Bom 675 (677) (FB), *Sinapaya v. Shivapa*.

(‘33) Mad S M, p. 76. (Citing B P Mis., 654, 4th March 1939.)

14. (‘33) Mad S M, p. 72-73. (Citing B P 446, Mis., 23rd April 1912.)

15. (‘24) 11 AIR 1924 Nag 408 (409): 78 Ind Cas 956, *Nilkanth v. Kesheorao*.

16-17. (‘33) Mad S M, p. 69. (Citing B P 1273, 7th May 1883. Guarantees required under R. 4 of the Port Clearance Rules as a guard against the infringement of the Merchant Shipping Act require a stamp of 8 annas as an agreement.)

18. (‘33) 20 AIR 1933 Mad 162 (162): 145 Ind Cas 529, *Gangaiya v. China Lingaiya*. (‘84) 7 Mad 385 (387) (SB), *Reference under Stamp Act, S. 49*.

[See also (‘33) Mad S M, p. 70. (Citing B P 2493, 17th November 1886. Two brothers executed a document between themselves agreeing to divide equally between them the produce of some lands, etc., which were the joint family property, the produce being estimated to fetch Rs. 200 every year, and also an annual income of Rs. 100



itself effect any division but is merely an agreement for effecting a partition in future on the terms agreed is chargeable under this clause.<sup>19</sup>

2. See the undermentioned case.<sup>20</sup>

#### Agreement and settlement.

1. As seen in Note 3 of S. 2 (24) an immediate and present disposition of property is necessary for a settlement. Where a document contained an undertaking by the eldest son of a Hindu family to pay maintenance to his parents (the document was executed by the son and the parents but was *not attested*) it was held by the Madras Board of Revenue that the document was an "agreement not otherwise provided for" and not a settlement deed as there was no *actual disposition* of property.<sup>21</sup>

2. A executed a document in favour of his father, B. It recited that immovable properties to the value of Rs. 7,000 had been assigned to him for the maintenance of his family by B who retained the remaining properties worth Rs. 3,000 for the maintenance of himself and his wife. It was agreed that neither A nor B should mortgage or sell these properties without the consent of the other and the properties retained in possession of B should revert to A after the death of both B and his wife. The Board held that the document was not a "settlement," as it disposed of joint property and was made by the son in favour of his father, nor a partition-deed as it did not create a separate interest in favour of each of the parties but that it was an "agreement not otherwise provided for."<sup>22</sup>

#### Agreement and declaration of trust.

Where by a document certain Hindu co-parceners agreed among themselves that one of them should, after the date of the document, become managing member of the coparcenary and that he should manage the property in the manner laid down in the document, it was held by the Madras Board of Revenue that no trust was created by the document and it was chargeable as an agreement only.<sup>23</sup>

#### Agreement and receipt.

1. A, before his death, deposited with B certain ornaments and two promissory notes. A, during his life-time, had made a will and appointed C and D his trustees. A document was passed by C and D in favour of B when B made over the ornaments to C and D. A postscript was added by which C and D agreed that the two promissory notes should be returned by B when the widow of A made over to B a certain house. In a suit for return of the promissory notes against B reliance was placed by him on the postscript. The Subordinate Judge was of opinion that

derivable from marriage fees and the Karnicum emoluments—*Held* that the document was an "agreement not otherwise provided for.")]

Also see S. 2 (15) Note 5.

19. ('33) 20 AIR 1933 Mad 162 (162): 145 Ind Cas 529, *Gangaiya v. China Lingaiya*. (Article 4, Sch. I-A of Madras Act VI of 1922)

20. ('33) Mad S M, p. 72. (Citing B P 432, 25th October 1896. An unstamped cadjan document was executed in two parts; the first by A and B, and the second by A only. The first part purported to be a schedule of partition between A and B and set forth the sums of money owed to them and the cash in hand belonging to them. In

contained an additional clause to the effect that each party should bear the loss that might accrue in respect of his share and that neither of them was responsible to the other. In the second part A set part a certain kani of land for the maintenance of C to revert to him on the death of the latter—*Held* that the first part was in the nature of "an agreement not otherwise provided for" and the second "a settlement.")

21. ('33) Mad S M, p. 69. (Citing B P 1065 Routine 1st March 1937; B P Mis. 918, 18th March 1937.)

22. ('33) Mad S M p. 72. (Citing B P 1105 R., Mis. 20th May 1903.)

23. ('33) Mad S M, p. 71. (Citing B P 760, 29th October 1889.)



as the first portion of the document amounted to a discharge and was chargeable with a duty of one anna under Art. 7, Sch. II of the Act of 1869, the document was not admissible in evidence. It was held that as B sought to make use of the postscript only, the document required a stamp of eight annas under Art. 11, Sch. II of the Act.<sup>24</sup> The decision seems to be incorrect. (See S. 35 Note 8.)

2. A gave on the eighth of a month a letter to B in which A stated that the amount due to him from B on a settlement of accounts between them was Rs. 1,500 and undertook to transfer certain lands by a registered document without taking any consideration for the same, to give up *puja* service in a temple and to hand over the jewels, ornaments and vessels of the temple. At the foot of this letter B's agent made an entry, on the 18th of the month, acknowledging receipt of the jewels, ornaments, vessels, etc. The Board of Revenue, Madras, held that the letter was chargeable under this clause and that the entry by B's agent was not liable to duty as a receipt under S. 2 (23) (b).<sup>25</sup>

#### Hire-purchase agreements.

A hire-purchase agreement is simply an agreement to hire, with an option on the part of the hirer to purchase. The property does not pass until the specified conditions are performed. It is not even an agreement to purchase. A document containing such an agreement is chargeable under this clause and not as a conveyance under Art. 23.<sup>26</sup> (see also section 2 (10) Note 12.)

#### Agreement and vakalatnama.

A stipulation for the payment of a certain remuneration to a pleader in advance contained in a vakalatnama has been held to be a necessary part of the vakalatnama and not liable to additional stamp duty as an agreement.<sup>27</sup> (See Note 3 on S. 2 (21). But where a vakalatnama contained a special agreement stipulating for a reward of a large amount for the pleader's professional services beyond the ordinary rate and including a claim for a share of the proceeds recoverable in the suit, it was held that the document required additional stamp for the agreement.<sup>28</sup>

#### Agreement to pay money.

A letter by A to accept a certain amount from B at Ratnagiri and to repay that amount on his amount in Bombay to the Bank of Bombay was held liable as an agreement under Art. 11, Sch. II of the Act of 1869.<sup>29</sup>

#### Miscellaneous agreements.

See the undermentioned cases.<sup>30</sup>

24. ('80) 4 Bom 328 (329) (FB), *Motilal v. Munshook Kuramchand*.

25. ('33) Mad S M, p. 74. (Citing B P 344, Mis., 11th March 1916. B giving a letter of acknowledgment of his liability to A and binding himself to pay the amount of Rs. 1,500 if A fulfilled the conditions referred to in A's letter—Held, this letter was also an agreement chargeable under this article and not as a promissory note.)

26.†('17) 4 AIR 1917 Cal 71 (77): 44 Cal 72: 37 Ind Cas 175 (SB), *In re Linotype and Machinery Co.*

('31) Beng. S M, Vol. I, page 60.

[See ('04) 6 Bom L R 871 (874), *Gopal Tukaram v. Sorabji Nusserwanji*. (Not a case under Stamp Act.)]

Also see S. 2 (10) Note 12.

27. ('36) 23 AIR 1966 Cal 814 (815): I L R

(1937) 1 Cal 461:167 Ind Cas 202 (DB), *Radha Gobinda v. Ram Brahma*.

Also see S. 2 (21) Note 3.

28. ('68) 3 Agra H C R 286 (288) (DB), *Nuthoo Lall v. Budree Pershad*.

29. ('74) 1874 Bom P J 65, *David Haliday v. Ruta Nagiri Saw Mills Co.*

30. ('89) 1889 Bom P J 260, *Patel Amtha v. Gorji Kevalchandji*. (One A agreed with K to entrust the latter with his son for his welfare. K was to maintain him as an act of charity and was also to educate and take care of him and direct his conduct. In short A transferred his parental rights to K. If A claimed him back A could do so only on condition of repaying K the maintenance and education charges—Held that the document came within Sch. I Art. 5 (c) of the Stamp Act.)



4. **Agreement contained in letters.**—An agreement is liable to stamp duty although it is contained in a series of letters or correspondence and not a single document.<sup>1</sup> But, in such a case, all the letters need not be stamped. It is sufficient to stamp any one of the letters.<sup>2</sup> Express provision is made to this effect in S. 35, Proviso (c). (See also Note 2.)

5. **Attestation.**—An “agreement” may be attested or unattested. Hence attestation by a witness does not convert an “agreement” into a document of some other description for purposes of stamp.<sup>1</sup> But where the agreement is to pay money or to deliver grain or other agricultural produce the document will be a “bond,” if it is attested by a witness (see S. 2 (5) cls. (b) and (c) and a simple “agreement” if it is not attested. (See section 2 (5) Note 11.)

6. **Bond and agreement.**—A “bond” is only a particular kind of *agreement*. For the purpose of this Act, a “bond” is defined in S. 2 (5) and the stamp duty on a “bond” is specially provided for in Art. 15, and other articles. Hence, this article does not apply to a “bond.”<sup>1</sup>

Article 15 applies only to bonds as defined in S. 2 (5). An unattested agreement to do or forbear from doing any act with a penal clause providing for the payment of a certain sum of money in case of breach of contract is not a “bond” as defined in S. 2 (5), and hence is not covered by Art. 15. Such an instrument if it is not covered by any other article will be covered by cl. (c) of this article and be liable to be stamped thereunder.<sup>2</sup> (See S. 2 (5) Notes 3 and 4.) As to further instances of

(‘70) 13 Suth W R 353 (354) (SB), *Reference to High Court by Financial Commissioner of Oudh*. (A contract with the Public Works Department for the execution of works falls within Art. 11, Sch. II of Act XVIII of 1869.)  
 (‘33) Mad S M, p. 76. (Citing B Ps 223-R., Mis. 14th August 1929; 264-R., Mis. 16th September 1929. Agreements entered into with private parties for water drawn by them from Government sources are liable to a duty of 12 annas under Art. 4 (c) of Sch. I-A (Art. 5 (c) of Sch. I).)  
 (1867) 36 L J Q B 81 (84, 85): 2 Q B 144: 15 L T 466: 15 W R (Eng) 345, *Rein v. Lane*. (The defendants who were brokers, signed a properly stamped charter-party as agents for their principals, and then, at the request of the owner of the ship, signed a guarantee as follows: “In consideration of our having signed the charter-party of as agents of.... We hereby guarantee the due fulfilment of same”—This document bore a six penny agreement stamp—*Held* that this document was sufficiently stamped with a six penny stamp, as an agreement, and need not be stamped as a charter-party or an agreement for or relating to the freight or conveyance of money, goods and effects on board a ship, under 5 & 6 Vict., c. 79.)

#### Article 5—NOTE 4

1. (‘90) 17 Cal 548 (556), *A. C. Boyd v. Kreig*. (Correspondence containing complete agreement must be stamped although there is a draft prepared subsequently which one of the parties refuses to execute.)  
 (1841) 133 E R 850 (853, 854): 10 L J C P, 113 *Atherstone v. Bostock*.

[See however (‘30) 13 Mad 255 (263) (DB), *Ramier v. Gould*. (No stamp necessary if an agreement is contained in a correspondence.—*Note*.—This was the view under Act I of 1879. Under that Act there was no provision corresponding to proviso (c) to S. 35.)]

2. (1846) 153 E R 1048 (1046): 16 L J Ex 227: 7 L T (OS) 187: 71 R R 815, *Grant v. Maddox*.  
 (1834) 149 E R 1145 (1146): 4 L J Ex 28, *Peate v. Dicken*.

#### Article 5—NOTE 5

1. (‘33) Mad S M, page 71. (Citing B P. 61/501-R, Mis., 5th March 1901.—Local Fund contract agreements should be ranked as “Agreements” under Article 5 (c), Schedule I of Act II of 1899. Their attestation by witnesses does not convert them into bonds.)  
 (‘33) Mad S M, page 70. (Citing B P. 2370, 13th August 1883.)

#### Article 5—NOTE 6

1. (‘31) 18 AIR 1931 All 392 (393): 133 Ind Cas 157 (FB), *In the Matter of Raj Balamgir*. Also see S. 2 (5) Note 5.  
 2.† (‘82) 8 Cal 284 (286): 10 Cal L Rep 219 (DB), *Gisborne & Co. v. Subal Bowri*. (An instrument containing a covenant to do a particular act, the breach of which is to be compensated in damages, is not a bond.)  
 (‘71) 7 Beng L R 510 (512), *Robert v. G. G. M. Shir Core*.  
 (‘91) 14 Mad 18 (20), *Madras Railway Co. v. Rust*.  
 (‘15) 2 AIR 1915 Low Bur 70 (71): 8 Low Bur Rul 155: 28 I. C 300, *Katchi Rowther v. R. Naina Mohamed*.



documents held to be bonds or mere agreements see the undermentioned cases.<sup>3</sup> See also Note 9.

As to a document which amounts both to a bond and an agreement for sale of goods, See S. 2 (5) Note 11.

**7. Agreement and promissory note.**—A promissory note is defined in S. 2 (22). If an instrument does not contain the essentials of a promissory note it will not be chargeable as a promissory note. The instrument may amount to an agreement within the meaning of cl. (c) of this article in such a case. Thus an instrument in order to constitute a promissory note must contain a promise to pay a "certain sum of money." An instrument containing a promise to pay an unspecified sum will not be chargeable as a promissory note but as an agreement.<sup>1</sup>

'33) Mad S M, page 69. (Citing B. P. 572, 27th April 1880.)

[See ('87) 9 All 585 (589) : 1887 All W N 190 (FB), *In re Gajraj Singh*. (Penal provisions not to be taken into account in computing stamp duty.)]

Also see S. 2 (5) Note 4.

[See however (80) 2 All 654 (663) : 5 Ind Jur 264 (SB), *Reference by Board of Revenue N. W. P. under Act I of 1879*. (Per majority; Stuart C J contra—Dissented in 8 Cal 284, Doubtful in 9 All 585 (FB).)]

3. ('83) 7 Bom 137 (139) (DB), *Magandas Khemchand v. Ramchandra Hiraji*. (Loan of grain in consideration of repaying a larger measure of grain, held bond within S. 3 (4) (b) of Act of 1879 and not 'agreement' to give one thing for another.)

('81) 3 All 781 (786) : 1881 All W N 68 (DB), *Billings v. Uncovenanted Service Bank*. Agreement in execution proceeding to pay by certain instalments held to be mere agreement and not 'bond' under Act of 1869.)

('09) 33 Bom 426 (428) : 2 Ind Cas 432 (SB), *Hitwardhak Cotton Mills Co. Ltd. v. Sorabji Dinshaw*. (Agreement to lend money, etc. does not create any obligation to pay money and so does not constitute bond.)

('81) 5 Bom 478 (480, 481) : 1881 Bom P J 124 (FB), *Anonymous*. (Indemnity note to railway company by consignee of goods held not to be bond but mere agreement as no obligation to pay money was necessarily implied.)

('69) 6 Bom H C R (AC) 107 (109) (DB), *Lachiram Jayasangji v. Ramji*. (Document in the form of a pronote for the repayment of a certain quantity of grain, requires a stamp of one rupee under Art. 1, Sch. A of the Stamp Act, X of 1862.)

('88) 15 Cal 150 (151) (DB), *Murari Mohan v. Khettur Nath*. ("This document, hand-note, is executed by me for the purpose of purchasing a ghor. I take from you Rs. 7. I will pay interest on the sum at half-anna per rupee per mensem. Having received Rs. 7 in cash, this hand-note is executed"—

Held that the document was not a bond nor a pro-note, but an agreement to pay, chargeable with duty under cl. 5 of the schedule to the Stamp Act.)

(70) 1870 Pun Re No. 82 p. 209 (210) (DB), *Spencer v. Emamooddeen*. (Agreement to pay a pleader a certain amount (over the agreed fee) if the accused were acquitted (and nothing if they were convicted) which was attested by witnesses was held to be a bond within S. 3 (5) of Act, XVIII of 1869—Decision not correct—See also S. 2 (5) Note 3.)

('36) 161 Ind Cas 420 (421) (DB) (Oudh), *Sundarlal v. Gandharap Singh*. (Agreement to supply sugarcane juice held to be mere agreement and not bond.)

('24) 11 AIR 1924 Oudh 106 (106) : 26 Oudh Cas 383 : 80 Ind Cas 459, *Abhairaj Kuar v. Data Din*. (Unattested document described as a promissory note where by a person bound himself to deliver certain quantity of grain on demand—Held, it was neither a promissory note as it was not an undertaking to pay definite sum of money, nor a bond as it was not attested, but only an agreement coming under Art. 5 (c).)

('33) Mad S M, p. 69. (Citing B. P. 722, 27th May 1880—The agreements executed by abkari renters are liable to stamp-duty of 8 annas only if unattested, and to ad valorem duty as bonds if attested.)

#### Article 5—NOTE 7

1. (1833) 110 E R 589 (589) 2 L J (NS) K B 104 ; 38 R R 326, *Bolton v. Dugdale*. (1818) 171 E R 677 (678) ; 20 R R 694, *Smith v. Nightingale*.

[See also (1838) 132 E R 854 (855) : 7 L J C P 214, *Horne v. Redfearn*. (A letter ran as follows ; "I have received the sum of.... which I have borrowed of you, and I have to be accountable for the said sum with legal interest"—Held, the document is an agreement and not a promissory note. The fair and reasonable interpretation of the words "I have to be accountable" is that the party will give credit in account and pay the balance ; that is a special agreement and not a promissory note.)]



Further the document must *substantially* contain a promise to pay a definite sum of money and nothing more. An instrument containing a promise to pay money as part of a contract containing other stipulations was held chargeable as an agreement under this article.<sup>2</sup>

The instrument in the undermentioned case<sup>3</sup> was held to be an agreement and not a promissory note because it was not intended to be a promissory note.

In a promissory note there must be an unconditional promise to pay. In the undermentioned cases<sup>4</sup> it was held that there was no unconditional promise to pay and the instrument was held chargeable as an agreement.

Further, except in the case of documents in the particular form of words used in illustration (b) of S. 4 of the Negotiable Instruments Act, an express promise to pay would be necessary for a promissory note. In the undermentioned case<sup>5</sup> where there was no express promise to pay, the document was held chargeable as an agreement and not as a promissory note.

See also the undermentioned cases.<sup>6</sup>

For fuller discussion see Notes on S. 2 (22).

**8. Agreement altering terms of prior instrument.**—The terms of a contract can be altered by a subsequent agreement between the parties. Where such subsequent agreement is in writing, it will be liable to be stamped as an “agreement”

2. (1888) 21 Q B D 352 (355): 57 L J Q B 630: 36 W R (Eng) 833, *Mortgage Insurance Corporation v. Commissioners of Inland Revenue*.

3. ('23) 10 AIR 1923 Cal 659 (662): 79 Ind Cas 77 (DB), *Prasanna Kumar v. Panualla Miji*.

Also see S. 2 (22) Note 13.

4. ('04) 27 Mad 1 (3): 14 Mad L Jour 65 (FB), *Bharata Pisharodi v. Vasudevan Nambudri*.

(1849) 4 Ex 200 (210): 18 L J Ex 393: 80 R R 519: 14 L T (OS) 108: 154 E R 1182, *Hamilton v. Spottiswoode*. (Mere authority to a third person to pay.)

(1840) 173 E R 831 (832): 9 Car & P 270 (273), *Evans v. Phillpotts*. (An I. O. U. which contains special terms that the sum to be paid shall be reduced in a certain event and that part of the sum shall be disposed of in a particular manner does not require a promissory note stamp but an agreement stamp unless it relates to an amount under £ 20.)

[See also ('89) 13 Bom 669 (670) (FB), *Dhond-bhat Narharbhat v. Atmaram Moreshwar*. (Request for loan not promissory note.)]

5. ('88) 15 Cal 150 (151) (DB), *Murari Mohan v. Khettur Nath*. (A document ran as follows: “This document, hand-note, is executed by me for the purpose of purchasing a ghor. I take from you Rs. 7. I will pay interest on the sum at half-anna per rupee per mensem. Having received Rs. 7 in cash, this hand-note is executed.” Held

that the document was not a bond nor a pro-note, but an agreement.)

6. (1843) 174 E R 700 (700): 70 R R 775, *Waithman v. Elsee*. (I. O. U. signed by defendant but not addressed to any one which was in the following form: “I.O.U. £85, to be paid May 5” was held to be a promissory note.)

(1846) 9 Q B 312 (314): 15 L J Q B 344: 7 L T (OS) 256: 115 E R 1293, *Fancourt v. Thorne*. (T made a note in the following terms: “On demand I promise to pay H or order the sum of....for value received, with interest at the rate of....and I have lodged with the said H the counterpart leases signed by D for ground let by me to him, as a collateral security for the said sum of....with interest.” Held that this may be sued on as a promissory note and read in evidence, though stamped as a note only and not also as a mortgage or an agreement, because the latter part was merely an assertion of the fact of deposit.)

('33) Mad S M page 75. (Citing B. P. 962-R., Mis., 9th April 1906. An entry in an account book ran as follows: “The balance still due is Rs. 274-1-3. The time fixed for payment of this is fifteen days. From after the expiry of the time fixed, it is settled that the amount should be paid with interest at 1 per cent. per mensem.” The original bore a 1 anna receipt stamp on which the debtor had signed. The Board held that document was an “agreement not otherwise provided for,” and not a promissory note.)



## AGREEMENT

under clause (c) of this article.<sup>1</sup>

**9. Instrument containing several matters.**—The general principles as to instruments containing several distinct matters or coming under two or more headings in Sch. I have been discussed in the Notes on Ss. 5 and 6. On the above principles, where an instrument amounts to an “agreement not provided for elsewhere” and some other matter or matters it will be liable to the highest duty chargeable under Sch. I in respect of the document.<sup>1</sup>

On the other hand, where the instrument comprises several *distinct matters* one of which is an “agreement not provided for elsewhere,” the duty payable would be the aggregate amount that would have been chargeable had a separate instrument been executed in respect of each matter.<sup>2</sup> Similarly, where the instrument contains several distinct agreements, it is chargeable with the aggregate amount of duty that would have been payable if a separate instrument had been executed in respect of each agreement.<sup>3</sup>

**10. Reference to arbitration.**—An agreement by the parties to refer their dispute to arbitration requires to be stamped under cl. (c) of this article.<sup>1</sup> But separate letters written by the parties authorizing arbitrators to arbitrate between them do not require any stamp as each letter by itself does not amount to an agreement but operates as a submission to arbitration alone by the party writing it though taken together they may be evidence of a verbal agreement to refer to arbitration.<sup>2</sup> In the undermentioned case<sup>3</sup> the parties drew up a reference to arbitrators. One

## Article 5—NOTE 8

1. ('43) 30 AIR 1943 All 218 (219) : 207 Ind Cas 252, *Radha Swami Sat Sang Sabha v. Raj Narain*. (Document providing for alteration of terms as to mode of payment and rate of interest under prior promissory note.)
- (1837) 7 L J Ex 34 (38) : 150 E R 1064, *Bacon v. Simpson*. (Endorsement on an agreement extending the time for the performance of the contract is a fresh agreement and requires a new stamp.)
- (1827) 108 E R 720 (722) : 31 R R 190, *Reed v. Decree*. (Agreement altering terms of prior agreement, not stamped and so not admissible in evidence—Plaintiff cannot proceed upon counts setting out the first agreement alone.)

## Article 5—NOTE 9

1. ('80) 4 Bom 19 (20) : 4 Ind Jur 413 (FB), *Chimnaji v. Ranu*. (Bond and agreement.)
- ('46) 33 AIR 1946 Mad 437 (441) : ILR (1947) Mad 141 : 227 Ind Cas 360, *Sethuraman v. Ramanathan*. (Mortgage for Rs. 10,000—Deed providing for further advances on same security—Rs. 7,000 advanced from time to time—Document adjudged by collector as mortgage and agreement under Art. 33 and Art. 4 (c) of Sch. IA (Mad.)
2. ('09) 33 Bom 426 (428) : 2 Ind Cas 432 (FB), *Hitwardhak Cotton Mills Co. Ltd. v. Sorabji Dinshaw*. (Transfer of mortgage and agreement.)
- ('91) 15 Bom 675 (677) (DB), *Sinapaya v. Shivapa*. (Conveyance and agreement.)

- ('45) 32 AIR 1945 Lah 69 (74) : ILR (1946) Lah 185 (SB), *Miran Bakhsh v. Emperor*. (Power of attorney, mortgage and agreement.)
- ('88) 11 Mad 216 (218) (SB), *Reference under Stamp Act, S. 46*. (Declaration of trust and agreement.)
- ('24) 11 AIR 1924 Nag 408 (409) : 78 Ind Cas 956, *Nilkanth v. Kesheorao*. (Nokarnama or agreement for service and security bond.)
- (1862) 176 E R 144 (145) : 3 F & F 320 (321), *Batson v. Trance*. (Agreement and receipt.)
- (1811) 128 E R 151 (151) : 3 Taunt 382 (382), *Corder v. Drakeford*. (Lease and agreement to sell.)
3. ('83) 1883 Bom P J 277, *In re Vithal Govind*. (Where several lots are bought in by the same person in an auction, the contract for each is essentially separate and thus a separate agreement duty is properly chargeable on each lot, even though the memoranda are collectively written on the same paper.)
- (1900) 10 Mad L Jour 378 (381) (FB), *In re Body Naikan and Best & Co*. (Agreement with several owners of lands relating to prospecting licence and acquisition of land for mining operations, held to be distinct agreements with several persons in respect of distinct properties.)
- (1847) 84 R R 853 (855) : 12 Jur 48, *Watling v. Horwood*. (Separate lots put up to sale and knocked down in auction—There is a separate contract in respect of each lot.)
- (1832) 38 R R 231 (232) : 110 E R 384, *Roots v. Dormer*. (Lots sold in auction—There is a distinct contract in respect of each lot.)



of the three arbitrators named in the reference refused to act and another person was, by written agreement appointed in his place. The question was whether this latter document required a stamp. It was held that the document was not a reference to arbitration but was only a substitution of the name of one arbitrator in place of another or a letter of nomination which was not provided for in the Stamp Act.

Even a letter signed by both A and B but containing a request to C for the appointment of arbitrators and the issue of an award does not require a stamp<sup>4</sup>, as the letter is not itself a reference to arbitration but authorizes a third person to appoint arbitrators.

It has been held that a provision to refer to arbitration contained in a bought and sold note does not come under S. 5<sup>5</sup> or S. 6<sup>6</sup> of the Act so as to require a stamp under this article but is sufficiently stamped under Art. 43.

11. **Contract of guarantee.**—A contract of guarantee not amounting to a “security-bond” within Art. 57 is liable to duty under cl. (c) of this article.<sup>1</sup>

12. **Compromise petition.**—A compromise is a binding agreement between the parties<sup>1</sup> and as such must be stamped under this article where it is not governed by the provisions of any other article in the Stamp Act. It may also require in addition a court-fee stamp under Sch. II Art. I of the Court-fees Act if it answers the description of a petition provided for under that article. Where in a suit by plaintiff on a bond the defendant filed a *solehnama* admitting liability to plaintiff for a certain amount and promising to pay the same by instalments, the plaintiff expressing his consent to the arrangement, it was held that the *solehnama* was not a petition to the Court within the meaning of Art. 10 of Act XXVI of 1867 but was an agreement chargeable with stamp duty under Sch. A of Act X of 1862.<sup>2</sup>

In the undermentioned case<sup>3</sup> a petition was filed in an execution proceeding on behalf of the decree-holder, judgment-debtor and surety for the judgment-debtor, stating the terms of the tripartite agreement arrived at between them and praying for withdrawal of the execution case. The Court observed as follows :

#### Article 5—NOTE 10

1.†('83) 1883 Bom P J 151 (FB), *Bajabai Bhajraj v. Shivram Bhojraj*.

†('24) 11 AIR 1924 Cal 794 (795) : 82 Ind Cas 416 (DB), *Kali Charan v. Mani Mohan*. ('21) 8 AIR 1921 Cal 613 (614) : 77 Ind Cas 845 (DB), *Rung Lal Kalooram v. Kedar Nath Kesrimal*.

2. ('95) 19 Bom 32 (33) : 1893 Bom P J 564 (DB), *Gangaram Kushaba v. Narayan Babaji*.

3. ('24) 11 AIR 1924 Cal 794 (795) : 82 Ind Cas 416 (DB), *Kali Charan v. Mani Mohan*.

4. ('09) 36 Cal 736 (743) : 3 Ind Cas 185 (DB), *Finlay Muir & Co. v. Radhakissen Gopikissen*.

5. ('12) 39 Cal 669 (677) : 16 Ind Cas 153, *Bombay Company Ltd. v. National Jute Mills Co. Ltd.*

Also see S. 5 Note 5, S. 6 Note 7 and Art. 43 Note 3.

6. ('13) 40 Cal 219 (229) : 18 Ind Cas 978 (DB), *Bajinath v. Ahmed Musaji Sateji* (1 Ind Cas 371 reversed—Held, practice of stamping such documents with one anna stamp was not invalid.)

('16) 3 AIR 1916 Sind 86 (92) : 10 Sind L R

14 : 35 Ind Cas 449, *Tarachand Ganshamdas v. Louis Dreyfus & Co.* (39 Cal 669 and 40 Cal 219 followed.)

#### Article 5—NOTE 11

1. See ('26) 13 AIR 1926 Cal 877 (878) : 53 Cal 515 : 95 Ind Cas 483 (DB), *Joyman Bewa v. Easin Sarkar*. (NOTE.—In Mulla and Pratt's *Stamp Act* 4th (1941) Edition p. 175, this case is cited as deciding that cl. (c) of this Article applied to the instrument in question in that case. This is not correct. All that the decision held was that stamp duty was necessary for the document—No article was mentioned.)

#### Article 5—NOTE 12

1. ('17) 4 AIR 1917 Cal 740 (742) : 44 Cal 789 : 35 Ind Cas 850, *J. C. Galstaum v. Woomeshchandra*.

†('13) 21 Ind Cas 538 (539) (DB) (Cal), *Keshab Panda v. Bhubani Panda*.

2. ('67) 8 Suth W R 241 (215) (DB), *Manick Chunder Roy v. Lallmon Sheikh*.

3. ('26) 13 AIR 1926 Cal 877 (877, 878) : 53 Cal 515 : 95 I. C. 483 (DB), *Joyman Bewa v. Easin Sarkar*.



"That petition bears a court-fee stamp appropriate to a petition, but is not stamped either as a contract of suretyship or as a security-bond.....the contract contained in the petition signed by the three parties concerned amounted to a contract of guarantee within S. 126 of the Contract Act.....The contract must be stamped not only as a petition but also with a further stamp appropriate to a contract of guarantee as provided by the Stamp Act."

If, however, a compromise petition merely contains a recital of a previous agreement it does not require a stamp under this article or any other provision of the Stamp Act.<sup>4</sup> Thus, a petition informing the Court of an agreement into which the parties have entered for the compromise of the suit and praying for the removal of the suit from the file<sup>5</sup> or for a decree in terms of the compromise<sup>6</sup> or a petition informing the Court executing a decree, of the terms on which the plaintiff had agreed to suspend the execution of the decree against the defendant<sup>7</sup> is not required to be engrossed on a stamp paper under the Stamp Act. Such a petition is chargeable only with a court-fee under para. 2. cl. (b) of Art. 1, Sch. II of the Court-fees Act, 1870.

Where in an execution case the judgment-debtor filed a *solehnama* under which he obtained time from the decree-holder on condition that he would pay in full, within the time obtained, the entire decretal amount and if he failed to do so the decree-holder might take possession of a certain land, it was held that the document amounted to a deed of conditional transfer by way of mortgage; it was not a mere "agreement or memorandum of agreement" to effect a future mortgage; it was not also a mere petition informing the Court that an oral contract had come into existence but was a written contract between the parties in respect to the hypothecation to the decree-holder of the judgment-debtor's land and that whether regarded as a deed of mortgage or as an agreement to mortgage was insufficiently stamped with a stamp of one anna.<sup>8</sup>

**13. Acknowledgment of debt coupled with promise to pay.**—An acknowledgment, in order to be chargeable under Art. 1, must be of a debt. An agreement by A with B to pay a debt due by C to B requires to be stamped under cl. (c) of this article and not under Art. 1 as there is no debt actually due by A.<sup>1</sup>

The acknowledgment must be given in order to supply evidence of the debt in order to come under Art. 1. Where it is not intended to be used as evidence of the debt the instrument may be chargeable as an agreement under this article.<sup>2</sup>

An acknowledgment containing a promise to pay the debt has been expressly excluded by the proviso to Art. 1 from the applicability of that article. Such an

4. ('08) 12 Cal W N 59 (60) (DB), *Pitambar Gain v. Uddhab Mondal*.

[See also ('13) 19 Ind Cas 551 (552) (DB) (Cal), *Ambica Charan v. Srinath Dutta*. (When a *solenama* refers to the subject-matter of the claim it becomes a proceeding of the Court and does not require registration or stamp duty.)]

5. ('67) 8 Suth W R 214 (215) (DB), *Manickchunder Roy v. Lallmon Sheikh*. (In a suit on a bond of Rs. 32 with interest, the plaintiff filed a *razeenamah* stating that the defendant had satisfied his claim and withdrawing his suit—Held, the *razeenamah* was in the nature of a petition under Art. 10, Act XXVI of 1867 to the Court and not an agreement under Sch. A of Act X of 1862.)

†('85) 8 Mad 15 (17) (SB), *Reference under Stamp Act, S. 46*. (Petition informing Court

of agreement by defendant to deliver to plaintiff certain wood held not a bond.)

Also see Preamble Note 41 and S. 3 Note 9.

6. ('18) 5 AIR 1918 All 307 (308): 40 All 19: 42 Ind Cas 1008 (DB), *Ramsaranlal v. Emperor*.

Also see S. 62 Note 15.

7. ('71) 3 N W P H C R 14 (15), *Ramdial v. Dhoobey Jhaunna*.

8. ('83) 1883 All W N 93 (96) (FB), *Rupchand v. Thakur Dial*.

Also see S. 2 (17) Note 7.

Article 5—NOTE 13

1. ('80) 1880 Bom P J 324 (FB), *Hormusji v. Dayabhoy*.

2. ('98) 8 Mad L Jour 66 (68) (DB), *Lakshminarayana v. Ramajogigaru*.

Also see Art. 1 Note 1.



acknowledgment may be a bond, promissory note or a mere agreement according to the nature of the instrument in each case.<sup>3</sup> In the cases noted below,<sup>4</sup> the instruments were held to be agreements chargeable under cl. (c) of this article. The undermentioned decision<sup>5</sup> holding that an entry in the creditor's register by the hand of the debtor that the money would be repaid on a certain date signed by him but not attested did not amount even to an "agreement" under this article does not seem to be correct.

3.†('36) 23 AIR 1936 Cal 399 (400) : 165 Ind Cas 520 (DB), *Bogra Loan Office v. Jyotish Chandra*.

('34) 21 AIR 1934 Mad 25 (26) : 146 Ind Cas 943, *Kadir Moithin v. Panduranga*.

[See also ('37) 24 AIR 1937 Lah 865 (866) : ILR (1937) Lah 234 : 169 Ind Cas 608 (DB), *Kesar Singh v. Sant Ram*. (Question whether an acknowledgment is tantamount to promise to pay and whether it requires to be stamped as an agreement must be decided on the wording of the acknowledgment—Acknowledgment by M as follows: "Balance from above account at instance of M Rs....."—Acknowledgment contains merely admission that balance on certain date was a certain amount—Acknowledgment cannot be treated as agreement.)]

4. ('36) 23 AIR 1936 Cal 399 (400) : 165 Ind Cas 520 (DB), *Bogra Loan Office v. Jyotish Chandra*. (Acknowledgment by debtor followed by words "We are going to repay the whole debt soon." Held contained express promise to pay but such promise to pay did not render document liable as a promissory note or a bond but only as memorandum of agreement.)

(42) 29 AIR 1942 Lah 50 (54) : ILR (1942) Lah 282 : 199 Ind Cas 161 (FB), *Shiv Ram Punnun Ram v. Faiz*. (Balance couched in words: "baqi rahe lene"—Held, if these words import a promise to pay, they will amount to an agreement or if attested, to a bond.)

('39) 26 AIR 1939 Lah 486 (488) : 188 Ind Cas 420, *Fateh Mahammad v. Surja*. (Balance struck in account book of creditor followed by entry 'baqi rahe lene' with signature of debtor—Held that entry imported a promise to pay and therefore amounted to an agreement and not to a mere acknowledgment. NOTE.—Case must be held overruled by AIR 1942 Lah 50 : ILR (1942) Lah 282 (FB) as regards the general rule that such words import a promise to pay.)

('38) 25 AIR 1938 Lah 511 (512) : 178 Ind Cas 197, *Firm Duli Chand v. Panthi*. (Where a balance is struck in the account book of a creditor and is followed by a statement "baqi rahe lene lekha ker ke char so tees rupiya" which is signed by the debtor, the document is an agreement and not a mere acknowledgment. NOTE.—The case must be held overruled by AIR 1942 Lah 50 : ILR (1942) Lah 282 (FB) as regards the general rule laid down

that such words import a promise to pay.) ('38) 25 AIR 1938 Lah 503 (505) : 177 Ind Cas 270 (DB), *Firm Tek Chand v. Ata Mohammad*. (Balance struck by debtor followed by words "baqi rahe" and signed by him would be a mere acknowledgment—If words used are "baqi dene" it would amount to an "agreement"—If further it is attested by witnesses it would be a bond—NOTE.—Distinction drawn between "baqi rahe" and "baqi dene" held not well founded by Full Bench in AIR 1942 Lah 50 : ILR (1942) Lah 282 (FB).

('34) 21 AIR 1934 Lah 730 (732) : 153 Ind Cas 233 (DB), *Thakardas Rupchand v. Sher Ahmad Iqbal Ahmad*. (A document ran as follows: "Accounts have been settled with you today.....Rs..... have been credited to your account as per details below ....I will send the above amount to you soon." Held, it was not an acknowledgment within the meaning of Art. 1 Sch. I as there was a promise to pay—It was an agreement.)

('31) 18 AIR 1931 Lah 631 (631) : 132 Ind Cas 881 (DB), *Pahlad v. Shiblal*. (Where an entry in a bahi purported to be an unconditional acknowledgment and implied a promise to pay the sum mentioned—Held that the entry should be stamped as an agreement. NOTE.—The decision is not correct in so far as it decides that an implied promise to pay takes the case out of the purview of Art. 1).

('34) 21 AIR 1934 Mad 25 (26) : 146 Ind Cas 943, *Kadir Moithin v. Panduranga*. (An entry in creditor's account book made by debtor that "the sum will be paid by me immediately" is not an acknowledgment within Art. 1. Since payee is not named, it is not a promissory note and where it is not attested it cannot be a bond. It can, however, be regarded as an agreement or a memorandum of agreement.)

('38) 25 AIR 1938 Nag 464 (464) : 177 Ind Cas 889, *Narbada Prasad v. Mt. Sunki*. (NOTE.—The decision having held that Art. 1 will not apply as the acknowledgment contained a promise to pay the further observations that the instrument being both an acknowledgment and agreement must be stamped with a higher duty under clause (c) of this Article are wrong. The instrument will be chargeable only under this Article.)

5. ('03) 1903 All W N 174 (175), *Emperor v. Kallu Mal*. (Held, entry does not amount to a promissory note or an acknowledgment



**14. Acknowledgment of debt with stipulation to pay interest.**—As seen in Note 9 on Art. 1 the proviso to that article expressly excludes from its purview an acknowledgment containing a stipulation to pay interest. The stipulation to pay interest renders the document a memorandum of agreement to pay interest chargeable under cl. (c) of this article.<sup>1</sup>

Merely because an acknowledgment containing stipulation to pay interest contains several items the document cannot be held to contain as many agreements as there are items. Where the top portion of a *sarkhat* containing the agreement to pay interest was signed by the party and below the signature there were several items on the credit and the debit side it was held that the portion above the signature constituted an "agreement;" but the rest of the document did not constitute a separate agreement as it was not "executed" within the meaning of S. 2 (12).<sup>2</sup>

See also Notes on Article 1.

**15. Agreement relating to deposit of title deeds.**—In order that an instrument may fall within cl. (1) of Art. 6 it must constitute the bargain between the parties. A letter merely stating the terms on which an equitable mortgage *has been* effected has been held not to fall under that article but under cl. (c) of this article for purposes of stamp duty.<sup>1</sup>

"Deposit" within the meaning of clause (1) of Art. 6 implies the retention of the depositor's interest as owner. Where, in order to guarantee advances by a bank to K, Y endorses a promissory note and delivers it to the bank there is no *deposit* of the promissory note. Hence, an instrument containing the terms of the guarantee in the above case is not chargeable under that article but under cl. (c) of this article.<sup>2</sup>

as it did contain a promise to pay.)

Article 5—NOTE 14

1. ('34) 21 AIR 1934 All 1052 (1053): 152 Ind Cas 41 (DB), *In re Sukhdeo Prasad*.
- ('33) 20 AIR 1933 All 179 (180): 54 All 761: 142 Ind Cas 688 (DB), *Ram Prasad v. Sheo Baksh*.
- ('29) 16 AIR 1929 All 980 (981): 52 All 169: 121 Ind Cas 108 (DB), *Govind Singh v. Bijay Bahadur*.
- ('27) 14 AIR 1927 All 677 (678): 49 All 496 100 Ind Cas 593 (DB), *Prahlad Prasad v. Bhagwandas*. (Implied promise to pay interest.)
- ('19) 6 AIR 1919 All 196 (199): 41 All 169: 52 Ind Cas 974 (DB), *Mahadeo Kori v. Sheoraj Ram Teli*.
- ('01) 25 Bom 373 (375): 2 Bom L R 1132 (FB), *Laxmibai v. Ganesh*. (Implied stipulation to pay interest.)
- ('08) 35 Cal 111 (113): 11 Cal W N 1120 (FB) *Mulchand Lala v. Kashibullah Biswas*.
- ('07) 11 Cal W N 1122 (1124) (DB), *Enatullah Biswas v. Gajaruddi Biswas*. (Implied promise to pay interest.)
- ('30) 17 AIR 1930 Oudh 194 (195): 5 Luck 218: 123 Ind Cas 853 (DB), *Ballabh Das v. Puran*.
- ('08) 4 Low Bur Rul 330 (333): 14 Bur L R 287 (FB), *In re K. M. K. R. Kumarappa Chetty*.
- ('08) 4 Low Bur Rul 324 (330) (FB), *In re V. R. S. A. R. Raman Chetty*. (A letter addressed by A to B stated that A had

entered certain amount in his account in B's name as credit as from a certain date and at a certain rate of interest and also promised by the letter to pay the principal and interest by a certain date.—*Held*, (Ormond J. dissenting) that the letter was an instrument chargeable as a memorandum of agreement under Art. 5, Sch. I and not a mere offer.)

[See also ('16) 3 AIR 1916 Bom 214 (214): 33 Ind Cas 366, *Pratabchand Gulabchand v. Purshotamdas Malji*. (Acknowledgment containing stipulation to pay interest held not a promissory note.)

('75) 23 Suth W R 403 (404) (DB), *Mrs. A. Ferrier v. Ram Kalpa Ghose*. (NOTE.—Art. 5, Sch. II of the Act of 1869 did not contain the proviso. Still an acknowledgment with a stipulation to pay interest was held chargeable as an agreement under Art. 11, Sch. II of the Act.)]

Also see S. 2 (5) Note 7 and Art. 1 Note 9.

2. ('28) 15 AIR 1928 All 162 (163): 50 All 504: 118 Ind Cas 173 (FB), *In the matter of Shyam Sunder Lal*.

Also see S. 2 (12) Note 4 and Art. 1 Note 9.

Article 5—NOTE 15

1. ('17) 4 AIR 1917 Mad 799 (800): 35 Ind Cas 864, *Muthiah Chetty v. Kothandarama Swami*.

Also see Art. 6 Note 2.

2. ('33) 20 AIR 1933 Rang 31 (32): 11 Rang 145: 142 Ind Cas 761 (FB), *In re Imperial Bank of India*.



**16. Promise to pay time-barred debt.**—A promise in writing to pay a time-barred debt is enforceable as a contract under S. 25 (3) of the Contract Act. But such a promise will not be chargeable with stamp duty in every case. The reason is that as seen in Note 1 an agreement within the meaning of this article is a *bilateral* matter and means an agreement as defined by the Contract Act, viz., an *accepted proposal*, whereas the word “promise” under S. 25 (3) of the Contract Act is not used in this technical sense and will include a merely unilateral offer by the debtor to pay the debt.<sup>1</sup> But an “agreement” in the strict legal sense is not excluded from S. 25 (3) of the Contract Act. Hence, where the promise to pay a time-barred debt amounts to such an agreement it will both fulfil the requirements of S. 25 (3) of the Contract Act and be chargeable with duty as an “agreement” under this article.<sup>2</sup> But where the promise does not amount to such an agreement, it will not be liable to be stamped although it may be quite effective for the purpose of S. 25 (3) of the Contract Act.<sup>3</sup>

**17. Agreement for or relating to sale of goods or merchandise (Exemption (a)).**—Under Exemption (a), an agreement or memorandum of agreement for or relating, to the sale of goods or merchandise exclusively, is exempt from duty. The object of the exemption is to promote commerce<sup>1</sup> and hence the exemption should be liberally construed.<sup>1a</sup> But the onus of showing that an instrument is covered by the exemption is on the party relying on the exemption.<sup>1b</sup>

#### Sale

The exemption only applies where the agreement relates to a *sale* of goods or merchandise. The essence of a sale is that property must be transferred for a *price*. Hence, an *exchange* is not a sale for the purpose of the exemption.<sup>2</sup> But where essentially the transaction is a sale, the mere fact that part of the consideration is agreed to be paid in kind will not make it an exchange.<sup>2a</sup> The real character of the transaction should be judged from the whole of the circumstances of the case.<sup>3</sup>

Where there is no *transfer* of ownership of goods there is no sale and an agreement relating to such a transaction will not be within the exemption.<sup>3a</sup>

#### Goods or merchandise.

The sale must be of *goods or merchandise*. The exemption will not apply where the sale is of property other than goods or merchandise. So also, an agreement for *work and labour* is not within the exemption.<sup>3b</sup>

#### Article 5—NOTE 16

1. (1900) 23 Mad 94 (97, 98) (DB), *Appa Rao v. Suryaprakasa Rao*.

2. ('23) 10 AIR 1923 Cal 659 (662) : 79 Ind Cas 77 (DB), *Prasanna Kumar v. Panaula*. Also see S. 2 (5) Note 8 and S. 2 (22) Note 4.

3. ('23) 10 AIR 1923 Lah 481 (483) : 73 Ind Cas 652 (DB), *David Sutherland Clark v. Rose Grim Shaw*.

#### Article 5—NOTE 17

1. (1867) 36 L J Q B 81 (85) : 15 W R (Eng) 345 : 2 Q B 144 : 15 L T 466, *Rein v. Lane*.

1a. (1867) 36 L J Q B 81 (85) : 15 W R (Eng) 345 : 2 Q B 144 : 15 L T 466, *Rein v. Lane*.

1b. (1843) 134 E R 560 (563) : 63 R R 279 : 12 L J C P 147, *Chanter v. Dickson*.

Also see S. 3, Note 11.

2. ('01) 25 Bom 696 (698) : 3 Bom L R 384 (FB), *Samaratmal v. Govind*. (Agreement to give cotton in exchange of cotton-seeds—Exemption not applicable.)

('88) 11 Mad 459 (468) : 12 Ind Jur 335, *Volkart Brothers v. Vettivelu Nadan*. (Cotton delivered to owner of cotton press, who is bound to deliver cotton of like quantity

and quality.)

2a. ('37) 24 AIR 1937 All 190 (191) : 162 Ind Cas 504, *Imam Baksh v. Emperor*. (Sale of motor car partly to exchange for old car.)

(1855) 11 Ex 190 (192, 193) : 156 E R 795 : 25 L T (OS) 130 : 3 W R (Eng) 457, *Gurr v. Scudds*. (Agreement relating to sale of manure. Fact that part of the price was to be paid in straw did not affect the matter.)

3. See A.I.R. Commentaries on the Transfer of Property Act, 2nd (1945) Edn., S. 118 Note 3.

3a. See (1795) 170 E R 399 (400) : 1 Esp. 403 (404), *Leigh v. Banner*. (An agreement between merchants that one shall take a share in the outfit of a ship and the adventure is not an agreement for sale of goods.)

3b. (1856) 108 R R 461 (463) : 25 L J Ex 237, *Clay v. Yates*. (An agreement to print copies of treatise at certain price per sheet including paper, held not to be a contract for sale of goods within S. 17 of the Statute of Frauds as extended by 9 Geo. IV, C. 14, S. 7. It is a contract for work, labour and



The word "goods" has been defined as follows in S. 2 (7) of the Sale of Goods Act, 1930; "'Goods' means every kind of movable property other than actionable claims and money, and includes stock and shares, growing crops, grass and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale."

The Concise Oxford Dictionary gives as the meaning of "merchandise," "Commodities of commerce, goods for sale."

Thus, it seems that the word "goods" is wide enough to include "merchandise."

It will be seen that the expression "goods or merchandise" is not an equivalent for "movable property."<sup>4</sup>

According to English decisions shares in companies are not "goods."<sup>5</sup> But stocks and shares have been expressly included in the definition of "goods" in S. 2 (7) of the Sale of Goods Act, 1930. But actionable claims are not "goods."

An agreement for the sale of standing timber to be cut and removed by the purchaser is one within the exemption.<sup>6</sup> Similarly, an agreement for the sale of sugarcane crop is an agreement for the sale of goods.<sup>7</sup> (see the definition in s. 2 (7) of the Sale of Goods Act which expressly includes such categories of property within the expression "goods.")

According to some English decisions "fixtures" will not be "goods."<sup>8</sup> But it will be seen that in the definition in s. 2 (7) of the Sale of Goods Act, already quoted, fixtures which are agreed to be severed before sale or under the contract of sale are "goods."

A contract with a water company for the supply of water to the premises has been held to be an agreement for sale of goods.<sup>9</sup>

An agreement for the sale of an *undivided moiety* of a horse has been held to be an agreement for the sale of goods.<sup>10</sup>

materials.)

(1829) 172 E R 608 (608): 8 L J C P 65 : 31 R R 429, *Fielder v. Ray*.

4. ('97) 22 Bom 785 (786): 1897 Bom P J 226 (FB), *Vohra Mohammadali v. Ramchandra Anant*.

5. (1846) 153 E R 1101 (1102): 16 L J Ex 18 : 8 L T (OS) 121, *Knight v. Barber*. (Scrip is not goods, wares or merchandise.)

(1846) 136 E R 114 (118): 16 L J C P 18 : 7 L T (OS) 300, *Bowlby v. Bell*. (Railway shares not goods.)

(1840) 113 E R 392 (394) 9 L J (NS) Q B 29 : 52 R R 318, *Humble v. Mitchell*. (Shares in joint stock banking company.)

6. ('31) 18 AIR 1931 All 392 (393): 133 Ind Cas 157 (FB), *In the matter of Raj Balamgir*. ('97) 22 Bom 785 (787): 1897 Bom P J 226 (FB), *Vohra Mahamadali v. Ramchandra Anant*.

7. ('41) 28 AIR 1941 All 243 (253): I L R (1941) All 471 : 195 Ind Cas 791 (FB), *L. H. Sugar Factory v. Moti*.

[But see (1805) 102 E R 1419 (1422, 1423): 8 R R 566, *Crosby v. Wadsworth*. (A contract to sell the growing crop of grass on a close, for the purpose of being mown and made

into hay by the vendee is a contract for sale of an interest in land, within the Statute of Frauds. The reason is that during the time the grass is grown the vendee has right to exclusive possession of the close. It is not a contract for sale of goods within the Statute of Frauds.)

8. See (1876) 1 Q B D 700 (702): 45 L J Q B 540 : 34 L T 759 : 24 W R (Eng) 824, *Lee v. Gaskell*.

(1848) 2 Ex 778 (781): 17 L J Ex 266 : 11 L T (OS) 271 : 154 E R 705 : 76 R R 782, *Horsfall v. Hey*. (Memorandum that T has sold to G all the goods, stock-in-trade and fixtures in a certain shop—Held, that this was a conveyance and not an agreement for sale of goods.)

(1842) 3 Q B 961 (965): 12 L J Q B 55 : 61 R R 438 : 114 E R 777, *Dalton v. Whitten*.

9. (1829) 172 E R 619 (620): 4 C & P 87 (89), *West Middlex Water Works Co. v. Suwerkrop*. [See however ('33) Mad S M page 76 (Citing B. Ps. 223-R, Mis., 14th August 1929; 264-R. Mis., 16th September 1929.)]

10. (1835) 132 E R 47 (48, 49): 4 L J (NS) C P 270 : 42 R R 544, *Marson v. Short*.



An agreement for the sale of *future goods* is an agreement for the sale of goods within the exemption.<sup>11</sup> Hence, a contract for a chattel to be made and delivered is within the exemption.<sup>12</sup> It may be noted in this connexion that s. 6 of the Sale of Goods Act of 1930 expressly provides that the subject-matter of a contract of sale may be either existing goods or future goods.

#### Nature of instruments covered by the exemption.

In order that the document may fall within the exemption, the agreement must be one for or relating to the sale of goods exclusively.

Section 4 of the Sale of Goods Act, 1930, defines a contract of sale of goods as a *contract whereby* the seller *transfer* or agrees to transfer the property in goods to the buyer for a price. Thus, even where property in the goods is *actually transferred* to the buyer, the transaction is called a *contract* of sale of goods. Although it may be doubted whether such a contract will be an agreement *for* the sale of goods, it will clearly be an agreement *relating* to the sale of goods. Hence, where the document is one *whereby* goods are sold, it will be an agreement relating to the sale of goods. It will also be a "conveyance" as a conveyance on sale is expressly included in the definition of a conveyance in s. 2 (10). Being thus otherwise provided for (Art. 23) such an instrument will not come under cl. (c) of this article. Nevertheless it will be covered by Exemption (a) and will be exempt from duty. Where the document is a memorandum of a completed sale, it will be a memorandum of an agreement *relating* to the sale of goods and as such will be within the exemption.<sup>13</sup> Such a memorandum will not be a *conveyance*<sup>14</sup> as the instrument is not one *whereby* the property is transferred. Hence, not being otherwise provided for, it will be an instrument covered by cl. (c) of this article although exempt from duty by virtue of Exemption (a). In the undermentioned case<sup>15</sup> the Lahore High Court took the

11. ('82) 1882 Bom P J 195 (FB), *Shaligram Motiram v. Hanmantran Jamnadas*. (Contract for future delivery of tiles.)

(1855) 11 Ex 190 (192, 193) : 25 L T (OS) 130 : 3 W R (Eng) 457 : 105 R R 485 : 156 E R 795 *Gurr v. Scudds*. (Contract for sale of manure of horses for a year.)

(1815) 128 E R 935 (936) : 6 Taunt 11 (12), *Wilks v. Atkinson*. (Contract to sell and deliver oil which is *yet to be expressed* from the seeds in the seller's possession.)

(1809) 103 E R 1043 (1045) : 10 R R 521, *Parker v. Staniland*. (A contract by the owner of a close cropped with potatoes to sell to defendant the potatoes at so much per sack, the defendant to get them out of the ground immediately, is not a contract for any interest in land within the Statute of Frauds.)

[See (1826) 108 E R 309 (313) : 4 L J (OS) KB 313 : 29 R R 421, *Evans v. Roberts*. (A verbal agreement for sale of a *then growing crop of potatoes* is not an agreement for sale of any land or interest therein but only a sale of goods or wares or merchandise.)

12. (1861) 121 E R 716 (717) : 30 L J Q B 252 : 4 L T 546 : 9 W R (Eng) 702, *Lee Griffin*. (Contract to make a set of artificial teeth.)

(1835) 150 E R 261 (262) : 5 L J Ex 1, *Pinner v. Arnold*. (Agreement to make and deliver copper plate press.)

(1822) 106 E R 1315 (1315) : 5 B & Ald 613

(614), *Garbett v. Watson*. (Contract for sale of flour to be milled.)

(1826) 172 E R 72 (73) : 2 C & P 159 (160), *Hughes v. Breeds*. (Written paper containing specification of goods and vendor by it agreeing to furnish the goods in a tradesman-like manner is exempt as it is agreement for sale of goods and not for doing of work.)

13. ('37) 24 AIR 1937 All 190 (191) : 162 I. C. 504, *Imam Baksh v. Emperor*. (Documents described as 'receipts' and reciting particulars of a transaction of a sale of motor lorry—Documents held to be memoranda of agreement relating to sale.)

(34) 21 AIR 1934 All 201 (203) : 56 All 680 150 Ind Cas 672 (DB), *Raghubar Dayal v. Emperor*. (Sale of ornaments—Entry in books of account with price.—15 Mad 156 (FB), relied on.)

14. ('34) 21 AIR 1934 All 201 (203) : 56 All 680 : 150 Ind Cas 672 (DB), *Raghubar Dayal v. Emperor*.

[See however, (1848) 2 Ex 778 (781) : 17 L J Ex 266 : 76 R R 782 : 11 L T (OS) 271 : 154 E R 705, *Horsfall v. Hey*. (Memorandum that T has said to G all the goods stock-in-trade, and fixtures in a certain shop. Held that this was a *conveyance* not an agreement for sale of goods.)]

15. ('35) 22 AIR 1935 Lah 567 (568) : 17 Lah 1 : 158 Ind Cas 234 (SB), *Nanak Chand v. Fattu*.



view that an entry in the account book of the seller which was merely a memorandum of a transaction of purchase of goods on credit was not an agreement or memorandum of an agreement within the meaning of Art. 5 (c). It is submitted with respect that the view so expressed is not correct although this does not mean that the entry is liable to duty, as it is covered by Exemption (a).

An agreement to transfer the property in goods for a price will be an agreement "for" sale. A document whereby such an agreement is made will be an "agreement for the sale of goods." There being no actual transfer in such a case, the instrument will not be a "conveyance on sale" and hence, not being otherwise provided for, it will fall under cl. (c) of this article, though exempt from duty by virtue of Exemption (a).

A memorandum of such an agreement will be a memorandum of an agreement for sale of goods. It will not be a conveyance and hence will fall under cl. (c) of this article but will be exempt from duty by virtue of Exemption (a).

From the above, the following propositions may be formulated :

1. An agreement whereby goods are sold is a conveyance and is not covered by cl. (c) but is covered by Exemption (a).
2. A memorandum of such an agreement is covered both by clause (c) and Exemption (a).
3. An agreement to sell goods is covered both by clause (c) and Exemption (a).
4. A memorandum of such an agreement is covered both by clause (c) and Exemption (a).

Thus, it will be seen that the instruments in all the above four cases are covered by Exemption (a). In cases 1 and 2, the agreement is one whereby goods are sold. In cases 3 and 4, the agreement is to sell goods. It will be seen that both these types of agreements are covered by the expression 'contract of sale of goods' as defined in s. 4 of the Sale of Goods Act already cited.

But the expression "agreement relating to sale of goods" is wide enough to include documents by which a person neither sells nor agrees to sell goods to another. In other words, collateral agreements relating to the sale of goods are also within the exemption. For instance, a warranty of the goods sold will be exempt from duty.<sup>16</sup> So long as the agreement is one relating to the sale of goods, it is not also necessary for the applicability of the exemption that the agreement should be one between the vendor and purchaser.<sup>17</sup> Thus, a contract by a third person guaranteeing the payment of price by the purchaser will be within the exemption.<sup>17a</sup>

16. (1810) 170 E R 1199 (1199): 11 R R 754, *Skrine v. Elmore*.

17. (1861) 175 E R 1118 (1119): 2 F & F 408 (408), *Topping v. Bull*. (Agreement with an auctioneer, in a letter to him, employing him to sell goods in consideration of an advance obtained by him is within the exemption in the Stamp Act as "relating to the sale of goods.")

†(1846) 153 E R 1087 (1088): 16 L J Ex 50: 73 R R 419: 8 L T (OS) 170, *Southgate v. Rohn*.

(1810) 104 E R 267 (268): 12 R R 292, *Venning v. Leckie*. (Lord Ellenborough: "This contract relates to the payment of the price of goods purchased by the plaintiff

for himself and the defendant and is therefore a contract within the words of the exemption 'relating to the sale of goods.' It is more or less an agreement by the defendant to buy half the goods.")

(1790) 100 E R 713 (714, 715): 3 Term Rep 524 (527 528), *Curry v. Edensor*. (Contract by broker to indemnify against loss.)

17a. (1847) 153 E R 1403 (1404): 16 L J Ex 178: 73 R R 714, *Sadler v. Johnson*.

(1845) 6 Q B 917 (920): 14 L J Q B 142: 66 R R 602: 115 E R 345, *Martin v. Wright*.

(1818) 171 E R 675 (675): 2 Stark 368 (368), *Watkin's v. Vince*.

(1807) 103 E R 334 (335, 336): 8 East 242 (245, 247), *Warrington v. Furber*.



But the exemption will only apply where the agreement relates *exclusively* to the sale of goods or merchandise. Where the agreement relates to the sale of goods or merchandise and also to some *other* matter, the exemption will not apply.<sup>18</sup> Similarly, the exemption will not apply to an agreement relating to the sale of goods and of something else.<sup>18a</sup> But, where the agreement is essentially one for relating to the sale of goods the inclusion of *subsidiary* or collateral matters within the agreement will not take it out of the exemption.<sup>19</sup> Thus, a provision for warehousing

18. ('09) 2 Ind Cas 481 (483) (FB) (Mad), *Rodrigues v. Fernandez*.

(1909) 2 K B 604 (608, 609) : 78 L J K B 1158 : 101 L T 51, *County of Durham Electrical Power Distribution Co. v. Commissioners of Inland Revenue*. (Agreement for supply of electricity, a certain minimum sum being payable every quarter though no electricity might be taken during any quarter.)

(1843) 134 E R 560 (563) : 63 R R 279, *Chanter v. Dickson*. (Agreement for sale of goods as well as for work to be done.)

18a. (1837) 132 E R 505 (505) : 43 R R 726, *South v. Finch*. (Agreement for sale of goods and good-will.)

[See (1848) 2 Ex 778 (781) : 17 L J Ex 266 : 76 R R 782 : 11 L T (OS) 271 : 154 E R 705, *Horsfall v. Hey*. (Memorandum that T has sold to G all the goods, stock-in-trade and fixtures in a certain shop—*Held*, this was a conveyance and not agreement for sale of goods.)]

19\* ('36) 23 AIR 1936 All 481 (484) : 58 All 1083 : 163 Ind Cas 614 (SB), *In re Board of Revenue U. P.* (Agreement to sell sugar-cane crop with a number of subsidiary covenants.)

('31) 18 AIR 1931 All 392 (393) : 133 Ind Cas 157 (FB), *In re Raj Balangir*. (Where the primary object of the instrument is to evidence a transaction of sale of goods, the mere fact that the deed also provides for payment of price and removal of goods within a certain time will not take it out of the scope of exemption.)

('88) 1888 Bom P J 227 (DB), *Mullava v. Hakamaji*. (Stipulations about the payment of difference between contract price and market price in case of default and as to interest did not change the nature of contract.)

†('92) 15 Mad 150 (152) (FB), *Kyd & Co. v. Mahomed*. (Agreement for sale of goods containing also stipulations as regards payment of godown rent, fire insurance and reference to arbitration—*Held*, the stipulations being *collateral and subsidiary incidents relating to the sale of goods*, the document was exempt from stamp duty.)

('87) 10 Mad 27 (27) (SB), *Reference under Stamp Act, S. 46*. (An agreement to sell salt, the price to be paid one month after the execution of the agreement, and the salt to be at the risk of the purchaser from the date of execution of the agreement and if

the salt was not removed within a certain time it was to revert to and become the property of the vendor—*Held* the document was exempted from stamp duty as an agreement or memorandum relating to sale of goods or merchandise under Art. 2 (a) of, Sch. II, Act I of 1879.)

('33) Mad S M p. 76. (Citing B. P. S. 208-R. Mis., 31st January 1908 ; 40/270-R., Mis., 1st March 1910. The following entry in an account book is exempt from stamp duty under Exemption (a) to Art. 5, Sch. I of the Stamp Act: "A & Co. through B. Two months' credit. No. 490 mull—50 pieces at Rs. 3—Rs. 150. Interest 3/4 per cent. per mensem after time allowed B.")

('33) Mad S M p. 75. (Citing B. P. 1763, 13th June 1885. A executed an agreement to a trading firm, agreeing to purchase certain articles at a certain price, and in default, to forfeit the deposit he made and to pay any loss that may be incurred in consequence of his default. Arrangements were also made in regard to arbitration should any dispute arise in regard to time of delivery or the quality of the article—*Held* that the agreement was exempt under Exemption (a).)

†(1852) 18 Q B 321 (324, 325) : 118 E R 120 : 21 L J Q B 279 : 19 L T (OS) 104 : 88 R R 603, *Chatfield v. Cox*. (Agreement for sale of goods in discharge of debt due from vendor is within exemption.)

(1835) 132 E R 47 (48, 49) : 4 L J C P 270 42 R R 544, *Marson v. Short*. Agreement for sale containing stipulations in collateral matters—Exemption applies.)

(1826) 172 E R 72 (73) : 2 C & P 159 (160) *Hughes v. Breeds*. (If a written paper contain a specification of goods and the vendor by it agrees "to finish the goods in a tradesman-like manner," the agreement does not require any stamp as it is an agreement for the sale of goods, and not for the doing of work.)

(1818) 171 E R 695 (696) : 2 Stark 431 (432) *Whitworth v. Crockett*. (After a breach of an agreement to sell and deliver certain goods, the parties entered into a second agreement cancelling the former one and for the sale of the goods on different terms—*Held* second agreement is also one relating to sale of goods and as such exempt from stamp duty.)



etc., or terms as to the mode of payment of price, will not take out the instrument from the exemption. But, the *primary object* of the agreement, i.e., the primary object intended to be effected or sub-served by the agreement must be the sale of goods.<sup>20</sup> Where the primary object of the agreement is not the sale of goods but something else, the exemption will not apply merely because the document refers to a completed or future sale of goods.<sup>21</sup>

Where an instrument comprises an agreement relating to the sale of goods and also some other distinct transaction, the exemption will apply to the *agreement* and the instrument will be liable to duty only in respect of the other transaction.<sup>22</sup> The inclusion of some other transaction in the same instrument does not affect the applicability of the exemption to the *agreement*. On the same principle, where an instrument comprises two distinct agreements one of which relates to a sale of goods and the other does not, the former agreement will be exempt from duty and the latter will not.<sup>23</sup>

Not being note or memorandum chargeable under No. 48

The exemption does not apply to a note or memorandum chargeable under Art. 43. As to what will constitute such a note or memorandum see Notes on Article 43. See also the undermentioned cases.<sup>24</sup>

18. Attested agreement for sale of agricultural produce whether covered by Exemption (a).— See S. 2 (5) Note 11.

19. Description of stamp.—See Appendix C.

1805) 170 E R 808 (809) : 5 Esp 269 (272), *Heron v. Granger*. (Stipulations concerning mode of payment and other things such as [agreement of indemnity].)

See however, ('10) 5 Low Bur Rul 157 (158, 159) : 5 Ind Cas 986 (SB), *In re Revenue Stamp Case No. 19 of 1909-10 of the Collector, Prome*. (An instrument, which acknowledges the receipt of a certain sum of money, and further, in consideration of this payment, agrees to sell paddy at the harvest time at a certain rate, is not an agreement "for, or relating to the sale of goods exclusively," and is not therefore exempt under cl. (a) of the exemptions to Art. 5. So it should be stamped with eight annas under Art. 5 (b). Per *Hartnoll, J.* : "Even supposing this instrument is an agreement for the sale of goods, it seems to be more than that and to be an acknowledgment of a debt.")

20. (1852) 18 Q B 321 (324, 325) : 118 E R 120 : 21 L J Q B 279 : 19 L T (OS) 104 : 88 R R 603, *Chatfield v. Cox*.

(1819) 106 E R 549 (551) : 2 B & Ald 778 (781, 782), *Smith v. Cator*.

21. (1819) 106 E R 549 (551) : 2 B & Ald 778 (781, 782), *Smith v. Cator*. (A letter from a principal to his factor containing bills of exchange drawn upon the latter, and in which the principal promised to provide for the bills, if certain goods, then either in the factor's possession or about to be placed in his hands, should remain unsold at the time of the bills falling due, requires to be stamped as an agreement and does not come within the exception in the Stamp Act as a letter for or relating to the sale of

goods, the primary object of such letter not being the sale of goods, but the obtaining of an advance of money on the goods.)

22. ('41) 28 AIR 1941 All 243 (247, 253), 271 : I L R (1941) All 471 : 195 Ind Cas 791 (FB), *L. H. Sugar Factory, Pilibhi v. Moti*. [Per majority of Full Bench (Verma and Mulls, JJ., contra.)]

Also see S. 2 (5) Note 11.

[See however, ('36) 23 AIR 1936 All 481 (483) : 58 All 1083 : 163 Ind Cas 614 (SB), *In re U. P. Board of Revenue*. (Combination of sale of goods, mortgage of crops and bond—Exemption does not apply.)]

23. ('31) 18 AIR 1931 All 392 (393) : 133 Ind Cas 157 (FB), *In re Raj Balamgir*. (An agreement provided for the sale of standing timber to be cut down and removed by the purchaser. It further provided that should a rival proprietor raise any objection to the cutting down or removal of timber the responsibility of that would lie on the vendor—Held that though the agreement relating to sale of goods (standing timber) was exempt from duty, the second agreement required stamp under Art. 5, cl. (c).)

('47) 34 AIR 1947 Bom 343 (345) : ILR (1947) Bom 28 : 231 Ind Cas 139 (FB), *Supdt. of Stamps v. Ramakrishnalal*. (Contract note sent by *pakka adatia* to his constituent, intimating sale and purchaser of goods exclusively—Note is not chargeable under Art. 43 (a) as relationship between them is that of principal and principal—Art. 5 Exemption (a) applies.)

('44) 31 AIR 1944 Bom 325 (328, 329) : ILR (1944) Bom 696 : 221 Ind Cas 147 : (SB), *Superintendent of Stamps v. Brene & Co.*



**AGREEMENT TO LEASE.** *See* Lease (No. 35).

\*6. **<sup>a</sup>AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE**, that is to say, any instrument evidencing an agreement relating to—

(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or

(2) the pawn or pledge of moveable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—

(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement ;

(b) if such loan or debt is repayable not more than three months from the date of such instrument.

The same duty as a Bill of Exchange [No. 13 (b)] for the amount secured.

Half the duty payable on a Bill of Exchange [No. 13 (b)] for the amount secured.

#### *Exemption*

**Instrument of pawn or pledge of goods if un-attested.**

a. This article was *substituted* for the original article by S. 8 (1) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

#### **Provincial Amendments**

**BENGAL** See Bengal Sch. IA, Art. 6.

**BIHAR** See Bihar Sch. IA, Art. 6.

**BOMBAY** See the Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See C. P. Sch. IA, Art. 6.

**MADRAS** See Madras Sch. IA, Art. 5.

**ORISSA** See Orissa Sch. IA, Art. 6.

**PUNJAB** See Punjab Sch. IA, Art. 6.

**UNITED PROVINCES** See U. P. Sch. IA, Art. 6.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 6.

#### *SYNOPSIS*

1. Legislative changes.
2. Clause (1).
3. "Pawn or pledge."

- 3a. Existing or future debt.
4. Exemption.
5. Description of stamp. See Appendix C.

\* [1879—Art. 29 ; 1869—Sch. II, Art. 21 ; 1862—Sch. A, Arts. 13, 46, 47 ; 1860—Sch. A, Arts. 36, 41.]

(Contract Note relating to sale by member of East India Cotton Association, of cotton belonging to non-member—contract subject to East India Cotton Association by-laws—contract to be deemed as between principal

and principal as provided in by-law 81A—Contract Note held not chargeable under Art. 43 but came within exemption (a) to Art. 5.)



1. **Legislative changes.**—In the corresponding Art. 29 of the Stamp Act of 1879, there was no provision for cases in which the loan or debt was payable *on demand*; the article was, therefore, held inapplicable in such cases.<sup>1</sup> The present article provides for such cases. But the present article was only substituted in the Act by the amending Act XV of 1904. The original article was the same as the article in the Act of 1879.

The words “pawn or pledge” have been used in the place of the word “hypothecation” which was used in the Act of 1879. See Note 3.

2. **Clause (1).**—This clause applies to instruments evidencing an agreement relating to the deposit of title-deeds and other instruments therein mentioned by way of security for the repayment of a debt. A common class of cases to which the provision applies is that of equitable mortgages of immovable property. Such mortgages may be made without a written instrument but if one is executed it is chargeable with stamp duty under this clause. The instrument must constitute the bargain between the parties. A letter merely referring to the fact of deposit of title-deeds<sup>1</sup> or a confirmatory letter written subsequently<sup>2</sup> does not fall under this clause. A mortgage, however, is not necessary for the applicability of this article. Thus, an instrument purporting to be a letter of collateral security for a loan contained a provision that if within a certain period the principal and interest were not repaid, the creditor might recover the same by proceeding against a specified property and the executant personally. There was no transfer of right over the property. It was held that the document was liable to duty under this article.<sup>3</sup>

Where, in order to guarantee advances by a bank to X, Y endorses a promissory note and delivers it to the bank, there is no *deposit* of the promissory note. By the endorsement and delivery of the note, a complete assignment of Y's interest in the note is made in favour of the bank. A *deposit* implies the retention of the depositor's interest as owner. Hence, an instrument containing the terms of the guarantee in the above case is not covered by this article.<sup>4</sup>

The instrument deposited must be evidence of the title to any property whatever other than a marketable security.<sup>5</sup> For definition of “marketable security” see S. 2 (16A). A Pass Book of the Post Office Savings Bank is not a marketable security.<sup>6</sup>

Letters of hypothecation accompanying bills of exchange are exempt from stamp duty under Art. 40, Exemption (2), and the exemption applies also to such letters coming under this article. But letters of hypothecation accompanying a promissory note are not so exempt and may be chargeable under this clause.<sup>7</sup>

#### Article 6—NOTE 1

1. ('91) 1891 Bom P J 284 (DB), *Gopinath Dadaji v. Baleram Dadaji*. (Held Art. 44 of the Act of 1879 applied.)
- ('84) 1884 Bom P J 13, *Civil Reference No. 58 of 1883*. (Signed accounts (which showed that certain ornaments were pledged) which are not engagements to pay at any particular time, but are mere acknowledgments to be used, if used, if need be, as evidence are properly stamped with one anna.)

#### Article 6. NOTE 2

1. ('17) 4 AIR 1917 Mad 799 (801): 35 Ind Cas 864, *Muthiah v. Kothandaramaswami*. Also see Art. 5 Note 15.
2. ('32) 19 AIR 1932 Sind 73 (75): 26 Sind L R 29: 139 Ind Cas 95, *Tyabali v. Prapatibai*.

(1900) 27 Cal 587 (593): 4 Cal W N 524 (DB), *Queen-Empress v. Debendra Krishna*.

(This article contemplates an instrument contemporaneous with the advance and with the deposit.)

3. ('33) Mad S M p. 79. (Citing B. P. 1357-R., Mis., 1st November 1912.)

4. ('33) 20 AIR 1933 Rang 31 (32): 11 Rang 145: 142 Ind Cas 761 (FB), *In re Imperial Bank of India*. (Assumed that promissory note was an instrument “constituting or being... whatever.”)

5. ('33) Mad S M p. 78. (Citing B. P. 1680 Mis. 7th December 1909.)

6. ('33) Mad S M p. 79. (Citing B. P. 719-R., Mis. 30th June 1914.)

7. ('33) Mad S M p. 78. (Citing B. P. 297., 29th April 1889.)



3 “Pawn or pledge.”—Section 172 of the Indian Contract Act defines a pawn as follows :

“The bailment of goods as security for payment of a debt or performance of a promise is called ‘pledge.’ The bailor is in this case called the ‘pawnor.’ The bailee is called the ‘pawnee.’ ”

The expression “pawn or pledge” in this article is used in a much wider sense. It covers contracts whereby all kinds of chattels or choses in action are made security for the payment of debt.<sup>1</sup>

A pledge involves the retention of general property in the thing pledged by the pledgor, while only a special property passes to the pledgee.<sup>2</sup> Where a person standing guarantee for a customer of a bank, endorsed a promissory note in favour of the bank and delivered it to the bank it was held that all the interest of the guarantor in the pronote was transferred absolutely to the bank upon endorsement and delivery and hence the transaction was not a pledge.<sup>3</sup>

An essential condition of a pledge is that the pledgee must be put in possession of the thing pledged. Where delivery of possession either actual or constructive is not made, the transaction is not one of pledge.<sup>4</sup> Thus, where under a contract between a bank and its customer, the bank was to advance money to the customer to enable him to execute his contracts with the Government and the amounts that might fall due to the customer from the Government under such contracts were to be security, for the moneys advanced by the bank, it was held that there was no pawn or pledge of the amounts falling due from the Government.<sup>4a</sup>

In the corresponding Art. 29 of the Stamp Act of 1879 the word “hypothecation” was used in the place of the words “pawn or pledge.” Hypothecation can be made even without the delivery of possession and hence the article was held applicable though possession was not delivered.<sup>5</sup> But the undermentioned decision<sup>6</sup> adopted the view that the word hypothecation was used only in the sense of pledge, and hence in the absence of a provision for delivery of possession this article would not apply. The words “pawn or pledge” were substituted in the present article to make the position clear.

A hypothecation of movable property where possession is not given to the creditor, will now come under Art. 40 (b) though the duty in such a case has been reduced to that under this article. (See Reductions and Remissions made by Central Government, items Nos. 98 and 99 in Appendix D.)

**3a. Existing or future debt.**—The article was amended by Act XV of 1904 to make it clear that it applied also to cases where the security was in reference to a

#### Article 6—NOTE 3

1. ('45) 32 AIR 1945 Lah 69 (73): ILR (1946) Lah 185 (SB), *Miran Bakhsh v. Emperor*.
2. (1886) 17 Q B D 690 (701): 55 L J Q B 490: 59 L T 172n: 35 W R (Eng) 2, *In re Hardwick; Ex parte Hubbard*.
3. ('33) 20 AIR 1933 Rang 31 (32): 11 Rang 145: 142 Ind Cas (761 F B), *In re Imperial Bank of India*.
4. ('94) 21 Cal 241 (244), *Ko Shway Aung v. Strang Steel & Co.*
- (‘45) 32 AIR 1945 Lah 69 (73): ILR (1946) Lah 185 (SB), *Miran Bakhsh v. Emperor*.
- (1886) 17 Q B D 690 (697): 55 L J Q B 490: 59 L T 172n: 35 W R (Eng) 2, *In re Hardwick; Ex parte Hubbard*.
- (1868) 3 Ex 299 (302): 37 L J Ex 174: 18

- L T 656: 17 W R (Eng) 13, *Halliday v. Holgate*. (In the case of a pledge the right to possession of the property vests in the pledgee so far as it is necessary to enable him to recover his debt. The right of the pledgor consists in his right to assign his interest to a third person, but he is not entitled to possession without paying off the debt.)
- 4a. ('45) 32 AIR 1945 Lah 69 (73): ILR (1946) Lah 185 (SB), *Miran Bakhsh v. Emperor*.
5. See ('85) 8 Mad 104 (107) (SB), *Reference under Stamp Act, S. 46*. (Held that the document was chargeable as a mortgage and not under this article as it was not a mere hypothecation of the crops.)
6. ('94) 21 Cal 241 (244), *Ko Shway Aung v. Strang Steel & Co.*



future debt. Under the previous article the Calcutta High Court held that it only applied to instruments *contemporaneous* with the loan or deposit.<sup>1</sup>

**4. Exemption.** An entry in an account book evidencing a loan made on the pledge of jewels and signed by the borrower without being attested was as follows : "Credited to A, son of B, (description of jewels pledged) interest at Re. 1 per cent. (Rs. one hundred and fifty).....A." It was held that exemption under this clause was applicable in such case.<sup>1</sup>

**5. Description of stamp.**—See Appendix C.

**\*7. APPOINTMENT IN EXECUTION OF A POWER,**  
whether of trustees or of property, movable or immove-  
able, where made by any writing not being a Will. | **Fifteen rupees.**

#### Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 7.

**BIHAR** See Bihar Sch. IA, Art. 7.

#### BOMBAY

(i) *Substitute* the following , namely—

"7. Appointment in execution of a power, where made by any writing not being a will— ..		Fifteen rupees. Thirty-rupees."
(a) of trustees .. .. .		
(b) of property, moveable or immoveable ..		

—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (d).* [1-4-1932.]

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See C. P. Sch. IA, Art. 7.

**MADRAS** See Madras Sch. IA, Art. 6.

**ORISSA** See Orissa Sch. IA, Art. 7.

**PUNJAB** See Punjab Sch. IA, Art. 7.

#### SIND

(i) Same as that of Bombay (i)—*Sind Act I of 1938.* [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments—*Sind.*

**UNITED PROVINCES** See U.P. Sch. IA, Art. 7.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 7.

**1. Description of stamp.**—See Appendix C.

**2. Scope of the article.**—The article deals with two kinds of powers, viz., (i) power to appoint trustees, and (ii) power to appoint property. It provides that an instrument, not being a will, by which such power is exercised is chargeable with duty of fifteen rupees.

Where a person is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.<sup>1</sup>

\* [1879—Art. 6 ; 1869—Sch. II Art. 35.]

Article 6—NOTE 3a

1. (1900) 27 Cal 587 (593) : 4 Cal W N 524 (DB), *Queen-Empress v. Debendra Krishna.*

Article 6—NOTE 4

1. ('33) Mad S M page 79. (Citing B P 464-

R., Mis., 8th April 1910).

Article 7—NOTE 2

1. See explanation to S. 69, Indian Succession Act, 1925.



An instrument by which the executant in his capacity as owner, makes over a certain house for his sister-in-law's occupation during her life is not an "appointment" within this article. Such an instrument is chargeable as a "settlement" under Art. 58 of the Act.<sup>2</sup> Where a person left a will whereby he bequeathed to his executors a certain sum of money for establishing such charitable institution as they thought fit and the executors then joined in the execution of a document of trust for certain charitable purposes in respect of the fund bequeathed by the will, it was held that the instrument *qua* such fund was chargeable as an "appointment" under this article as the executors in appropriating the money to the trusts as declared by the instrument were exercising the power of appointment conferred upon them by the will.<sup>3</sup>

Where by a will the founder of a religious endowment gives a power to a *punch* of the community to enquire into the misconduct of a shebait and to remove him from the office and to appoint a new shebait in his stead and the *punch* in exercise of such power removes a shebait and appoints a new shebait in his place, by a *punchnama*, the instrument is chargeable under this article.<sup>4</sup>

Under the English Stamp Act of 1891 an "appointment of a new trustee" is chargeable with duty under the first schedule to that Act.<sup>5</sup> Under that law the appointment must be of a new trustee as distinguished from an original trustee and may or may not be in execution of a power. But under this article the appointment whether of a new or original trustee must be in execution of a power.

It has been held by the Financial Commissioner of the Punjab that the legal meaning of the term "appointment" is the exercise of the power conferred by a conveyance. Hence where a deed under Art. 58 provided for the appointment of five trustees and power was given to two of the five trustees to remove and discharge any of the trustees, and in exercise of the power these two trustees executed a document discharging and removing two other trustees, that document would fall under this article<sup>6</sup> (Financial Commissioner's No. 4386, dated 13th June 1914, to Deputy Commissioner, Lahore).

**\*8. APPRAISEMENT OR VALUATION** made otherwise than under an order of the Court in the course of a suit—  
(a) where the amount does not exceed Rs. 1,000 ;

(b) in any other case . . . . .

*Exemptions.*

(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.

The same duty as a Bond (No. 15) for such amount.  
Five rupees.

\* [1879—Art. 7 ; 1869—Sch. I Art. 21.]

2. ('87) 1887 Bom P J 243, *Bai Lakhi v. Amaldas Rama*.

Also see S. 2 (24) Note 6.

3. ('11) 35 Bom 444 (447) : 11 Ind Cas 982 (SB), *In re Abdulla Haji Dawood Bawla*.

Also see S. 2 (24) Note 3.

4. ('19) 6 AIR 1919 Cal 730 (737) : 51 Ind Cas 884, *Amrillal Shaha v. Gassain Ganpat Gir*.

5. See (1877) 3 Ex D 46 (48) : 37 LT 612 : 26 WR (Eng) 115, *Hadgett v. Inland Revenue*

*Commissioners*. (An order of charity Commissioners by which new trustees of a charity are appointed and the property of the charity vested in them, is chargeable under S. 8 of the Act of 1870, with duty in respect both of the appointment and of the vesting order, and does not come within the proviso to S. 78 as a conveyance or a transfer made for effectuating the appointment of a new trustee.)

6. ('34) Pun SM Part 1-B page 24.



- (b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.

### Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 8.

**BIHAR** See Bihar Sch. IA, Art. 8.

### BOMBAY

(i) In column 2 of clause (b) *substitute* the words "ten rupees" for the words "five rupees."—*Bombay Act II of 1932, Pt. IV. S. 15 (5) (b).* [1-4-1932.]

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See C. P. Sch. IA, Art. 8.

**MADRAS** See Madras Sch. IA, Art. 7.

**ORISSA** See Orissa Sch. IA, Art. 8.

**PUNJAB** See Punjab Sch. IA, Art. 8.

### SIND

(i) Same as that of Bombay (i).—*Sind Act I of 1938.* [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments.—*Sind.*

**UNITED PROVINCES** See U. P. Sch. IA, Art. 8.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 8.

### SYNOPSIS

1. Legislative changes.

2. Description of stamp. See Appendix C.

3. Appraisement or valuation.

4. Exemption (a).

1. **Legislative changes.**—Appraisement was for the first time made chargeable to stamp duty by the Stamp Act of 1869. The corresponding article of that Act did not except the appraisement made under an order of a Court; and a fixed duty of one rupee or eight annas was chargeable according as the amount of appraisement exceeded Rs. 500 or did not exceed that amount.

The corresponding article in the Act of 1879 was the same as the present article except that that article did not make any distinction as to stamp duty according to the amount involved as the present article does.

2. **Description of stamp.**—See Appendix C.

3. **Appraisement or valuation.**—This article prescribes the duty payable on appraisement or valuation. Appraisement made under an order of a Court is, however, not subject to any payment of duty as the article expressly excludes such appraisement from its purview.

There is a distinction between an award and an appraisement or valuation. In the case of an award the intention of the parties is that there shall be a judicial inquiry worked out in a judicial manner. But in the case of an appraisement no judicial inquiry is contemplated and hence an appraisement proceeding does not partake of a judicial character.<sup>1</sup> In the second place, the object of an arbitration is to settle disputes that have arisen between the parties. On the other hand, the object of an appraisement is to avoid disputes. In other words, it prevents differences and does not settle any that have arisen.<sup>2</sup>

#### Article 8—NOTE 3

1. (1886) 18 Q B D 7 (9): 56 L J Q B 530, *Re Carus-Wilson & Greene.*

2. (1858) 53 E R 916 (919): 28 L J Ch 184: 32 L T (OS) 233: 7 W R (Eng) 115, *Collins v. Collins.*

(1886) 18 Q B D 7 (9, 10): 56 L J Q B 530, *Re Carus-Wilson & Greene.* (State of land

on condition that purchaser should pay for timber on land at valuation—For purpose of valuation each party to appoint valuer and valuers to appoint umpire—In case of disagreement between valuers, umpire to make valuation—Valuers not agreeing—Valuation made by umpire—*Held*, this was case of appraisement.)



Thus, where an agreement between an outgoing and an incoming tenant was that the latter should buy the hay of the former and the former should allow to the latter the expense of certain repairs and that the value of the hay and of the repairs should be settled by referees and the referees made the valuation, it was held that the only thing left to the referees being the valuation of articles which the parties had already agreed should be paid for, the case was that of a valuation or appraisement rather than that of an award.<sup>3</sup>

It should, however, be noted that the distinction between an appraisement and an award drawn under the English law has no practical importance for the purposes of the Indian Stamp Act inasmuch as the stamp duty payable in either case is the same.

If there is no written valuation or inventory of the things valued, an agreement to purchase those things at a valuation requires no stamp.<sup>4</sup> Similarly, if a valuer speaks of the value of goods from recollection, he need not put in a written appraisement on stamp in evidence.<sup>5</sup>

4. Exemption (a).—This exemption is based on the principle laid down in *Atkinson v. Fell*.<sup>1</sup> In that case a valuation was made of the parish lands by two resident parishioners, appointed for that purpose at a parish meeting by the parish officers, with a view of equalizing the rate for the relief of the poor. It was held that the words "valuation or appraisement" do not extend to such valuations or appraisements as are made merely for the private information of parties, but to such only as are intended to be binding between them and that the valuation in the case being merely for the information of the parties did not require a stamp.

Such an appraisement does not require to be stamped even if it is afterwards made the foundation of an agreement. Thus, in *Jackson v. Stopherd*<sup>2</sup> at the termination of a partnership, but before the accounts were finally balanced, the plaintiff and the defendant agreed to divide the utensils and materials, each taking one half in value, article by article, according to a valuation to be made by a third person. After the valuation, it was agreed, that the defendant should have the whole at the value fixed. The valuation was not stamped. It was held that stamp was not necessary as the valuation was for the information of the parties, and not binding upon them, although it was afterwards made the foundation of an agreement.

\*9. **APPRENTICESHIP-DEED**, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, not being articles of clerkship (No. 11).

Five rupees.

#### *Exemption.*

Instruments of apprenticeship executed by a Magistrate under the Apprentices Act, 1850, or by which a person is apprenticed by or at the charge of any public charity.

\* [1879—Art. 31, Cf. (1870) 33 & 34 Viet., c. 97—S. 39 ; (1891) 54 & 55 Viet., c. 39—S. 25.]

3. (1810) 104 E R 1 (2) : 12 East 1, *Leeds v. Burrows*.

4. (1858) 175 E R 746 (746) : 1 F & F 321, *Bunyard v. Setbrook*.

5 (1823) 171 E R 1087 (1087) : 1 Car & P 24

(25),, *Stafford v. Clarke*.

Article 8—NOTE 4

1. (1816) 105 E R 1039 (1040) : 5 & M S 240.

2. (1834) 3 L J Ex 95 (96) : 149 E R 800.



## APPRENTICESHIP-DEED

## Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 9.**BIHAR** See Bihar Sch. IA, Art. 9.**BOMBAY**(i) In column 2 of Art. 9, substitute the words "ten rupees" for the words "five rupees."—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (b)*. [1-4-1932.]

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See C. P. Sch. IA, Art. 9.**MADRAS** See Madras Sch. IA, Art. 8.**ORISSA** See Orissa Sch. IA, Art. 9.**SIND**(i) Same as that of Bombay (i).—*Sind Act I of 1938*. [31-3-1938.](ii) See also Note given under Art. 1, Provincial Amendments.—*Sind*.**UNITED PROVINCES** See U. P. Sch. IA, Art. 9.**WEST PUNJAB** See West Punjab, Sch. IA, Art. 9.

## SYNOPSIS

- |                                  |  |
|----------------------------------|--|
| 1. Apprenticeship-deed.          | 3. Public charity.                       |
| 2. Apprentices Act, XIX of 1850. | 4. Description of stamp. See Appendix C. |

1. **Apprenticeship-deed.**—This article prescribes stamp for an apprenticeship-deed. The term "apprentice" is derived from the French word "apprendre" (to learn).<sup>1</sup> An apprentice is a person bound by indentures of apprenticeship to a professional man, tradesman or artificer, who covenants to teach him his profession, trade or mystery. The master is bound to instruct his apprentice and make him master of the art as far as his capacity to learn will permit.<sup>1a</sup> An instrument so binding a person to his employer is an apprenticeship-deed liable to stamp duty under this article.

An apprentice has to be distinguished from a servant. Where it appears from the contract that the relation of teacher and pupil was contemplated, the contract is one of apprenticeship.<sup>2</sup> In other words, there must not only be an intention on the part of the apprentice to learn but an obligation on the part of the employer to teach. It may be that an apprentice does, to some extent, the class of work which would be done by a servant. But he does not do it as a servant. The relation of an apprentice to his employer carries with it certain special incidents, and in particular that of being entitled to instruction.<sup>3</sup>

## Article 9—NOTE 1

1. (1799) 101 E R 1444 (1446) : 8 Term Rep 379, *R. v. Laindon*.
- 1a. Wharton's *Law Lexicon*, 14th Edition, page 72.
2. See (1831) 109 E R 1226 (1227) : 2 B & Ad 493, *R. v. Crediton*.
- (1904) 1 K B 288 (291) : 73 L J K B 133 : 90 L T 12 : 52 W R (Eng) 231, *Horan v. Hayhoe*.
3. (1904) 1 K B 288 (291) : 73 L J K B 133 : 90 L T 12 : 52 W R (Eng) 231, *Horan v. Hayhoe*.
4. (1904) 1 K B 288 (291) : 73 L J K B 133 : 90 L T 12 : 52 W R (Eng) 231, *Horan v. Hayhoe*. (Contract between A, B (A's father) and C, trainer of horses—A binding himself to serve C for a term, C covenanting to teach A of riding during the term and to provide him with food, lodging and certain wages—Contract held, one of apprenticeship and A was not servant.)
- (1831) 109 E R 1226 (1227) : 2 B & Ad 493, *R. v. Crediton*. (A agreed with a sawyer for

12 months to learn sawing, and was to have 7s. 6d. out of every 20s. earned by his master and himself. He served out the year in Parish X of A, providing his own board and lodging—At the end of the year he made a new agreement for another year at an increased allowance; and he lived out the second year with his master in X—Held, the principal object of the agreement between him and the master was that he should learn and his master should teach him sawing—As by the express terms of the contract A was to learn, an obligation on the part of the master to teach must be implied.)

(1799) 101 E R 1444 (1446) : 8 Term Rep 379 (383, 384), *R. v. Laindon*. (In consideration of three guineas paid by a pauper, a carpenter undertook to teach him business of a carpenter—Held that the parties intended to form the relation of master and apprentice.)

(1811) 104 E R 709 (711, 712) : 14 East 541 (548), *R. v. Shinfield*.



Whether a contract is a contract of apprenticeship or of service must depend upon the intention of the parties to be collected from the whole of the agreement.<sup>4</sup> A contract of apprenticeship may be formed without using the term "apprentice."<sup>5</sup>

An indenture by which an apprentice was bound for seven years to serve A for the first four years and B for the remaining three years to learn two different trades, was held to require only one stamp.<sup>6</sup>

Where the instrument constitutes a contract of service it will be liable to stamp duty as an agreement under Art. 5 and not under this article.

2. **Apprentices Act, XIX of 1850.**—This Act was enacted for better enabling children and especially orphans and poor children brought up by public charity, to learn trades, crafts and employments, so that they may gain a livelihood when they come to full age. Section 3 of that Act empowers a Magistrate or Justice of the Peace to act with all the powers of a guardian under the Act, on behalf of any orphan or poor child abandoned by its parents or of any child convicted of vagrancy or any other petty offence. Instruments of apprenticeship executed by a Magistrate in exercise of such power are exempted from stamp duty.

3. **Public charity.**—An instrument by which a person is apprenticed by or at the charge of any public charity is exempt from stamp duty. The expression "public charity" has a technical meaning in law.<sup>1</sup> Its definition, however, has not been attempted.<sup>1a</sup> In England, it is generally defined by a reference to the Statute (1601) 43 Eliz. ch. 4. Its Preamble enumerates a list of charities so varied and comprehensive that it became the practice of the Courts to refer to it as a sort of index or chart. The objects enumerated have in fact been treated as instances, the result being that those purposes are charitable which the Statute enumerates or which by analogies are deemed within its spirit or intendment.<sup>2</sup> The Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. Ch. 42), while repealing (1601) 43 Eliz. Ch. 4, leaves untouched the Preamble to that enactment. (See S. 13 (2).) The relevant portion of the Preamble to 43 Eliz. Ch. 4, runs as follows:

"Whereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money and stocks of money, have been heretofore given limited, appointed and assigned, as well by the Queen's most excellent Majesty and her most noble progenitors, as by sundry other well disposed persons, some for relief of aged, impotent and poor people, some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in Universities, some for repair of bridges, ports, havens, causeways, churches, seabanks and highways, some for education and preferment of orphans, some for or towards relief, stock, or maintenance for houses of correction, some for marriages of poor maids, some for supportation, aid and help of young tradesmen, handicraftsmen and persons decayed, and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers and other taxes;....."

5. (1799) 101 E R 1444 (1446): 8 Term Rep 379 (393), *R. v. Laindon*.

6. (1828) 108 E R 1036 (1037): 8 B & C 247: 6 L J (O S) Mc 107, *E. v. Louth*. Also see S. 5 Note.

Article 9—NOTE 3

1. Tudor on *Charities and Mortmain*, 4th Edition p. 34.

(1895) 2 Ch 501 (504): 64 L J Ch 856: 73 L T 202: 43 WR (Eng) 661, *In re Foveaux Cross v. London Antivivisection Society*.

1a. (1895) 2 Ch 649 (656): 64 L J Ch 695: 73 L T 269: 44 WR (Eng) 22, *In re Nottage Jones v. Palmer*.

2. Tudor on *Charities and Mortmain*, 4th Edition at p. 35.

(1895) 2 Ch 501 (504): 64 L J Ch 856: 73 L T 202: 43 WR (Eng) 661, *In re Foveaux Cross v. London Antivivisection Society*.

(1895) 2 Ch 649 (656): 64 L J Ch 694: 73 L T 269: 44 WR (Eng) 22, *In re Nottage Jones v. Palmer*.



In *Commissioners for Special Purposes of Income-tax v. Pemsel*,<sup>3</sup> Lord Macnaghten divides charities into four principal divisions : trusts for the relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.

The main point to consider in order to see if the institution is a public charity, is the purpose of the institution.<sup>4</sup> The intention must be to benefit the community.<sup>5</sup> Whether the charity is public does not depend upon whether it is universal. There may be a public charity the purposes of which are confined to a particular class.<sup>6</sup> The benefit of the community must be the direct and not the remote object of the gift.<sup>7</sup> For a detailed discussion of the subject, see A. I. R. Commentaries on the Transfer of Property Act, 2nd (1945) Edition, Section 18, Notes 3 to 5.

*Illustrative cases.*

- (a) Anti-vivisection Societies are charities within the legal definition of the term charity.<sup>8</sup>
- (b) An orphanage founded and used for boarding and lodging and educating children of deceased railway servants and supported mainly by public subscriptions, was held to be a house used for public charity within the meaning of the Local Improvement Act, 6 Geo. IV, c. 132.<sup>9</sup>
- (c) Trusts for lands for devoting the income thereof in perpetuity for performing *muktad*, *baj* and other like ceremonies of the Parsis, were held valid public charities.<sup>10</sup>
- (d) A legacy to trustees, upon trust to apply the income to providing each of the poor inmates of a poor-law union work house, above the age of 60 years, with one pint of porter, was held to be a valid public charity.<sup>11</sup>
- (e) A bequest in trust to put out yearly six poor boys of the Parish X and six of the Parish Y as apprentices, was held public charity.<sup>12</sup>
- (f) A bequest for placing out as apprentices two poor boys of such as were members of certain religious congregation and living in a particular parish, was held to be charitable.<sup>13</sup>
- (g) A gift for the encouragement of mere sport (yacht racing) is not charitable.<sup>14</sup>

4. Description of stamp.—See Appendix C.

3. (1891) 1891 App Cas 531 (583) : 61 L J Q B 265 : 65 L T 621.  
 4. (1885) 16 Q B D 163 (171) : 54 L T 175 : 55 L J M C 21, *Hall v. Derby Sanitary Authority*.  
 5. (1895) 2 Ch 501 (504) : 64 L J Ch 856 : 73 L T 202 : 43 W R (Eng) 611, *In re Foveaux Cross v. London Antivivisection Society*.  
 6. (1885) 16 Q B D 163 (171, 173) : 54 L T 175, *Hall v. Derby Sanitary Authority*.  
 7. (1895) 2 Ch 649 (653) : 64 L J Ch 695 : 73 L T 269 : 44 W R (Eng) 22, *In re Nottage Jones v. Palmer*. (Per Kekewich J.)  
 8. (1895) 2 Ch. 501 (507) : 64 L J Ch 856 : 73 L T 202 : 43 W R (Eng) 661. *In re Foveaux Cross v. London Antivivisection*

*Society*.  
 9. (1885) 16 Q B D 163 (172) : 54 L T 175 : 55 L J M C 21, *Hall v. Derby Sanitary Authority*.  
 10. (1909) 33 Bom 122 (211) : 1 Ind Cas 834, *Jamshedji Cursetjee Tarachand v. Soonabai*.  
 11. (1850) 84 R R 406 (407) : 19 L J Ch 150 : 15 L T (OS) 83 : 64 E R 669, *Attorney-General v. Vint*.  
 12. (1814) 105 E R 407 (408) : 2 M & Sc 338 (340), *R. v. Quainton*.  
 13. (1808) 33 E R 742 (743) : 15 Ves Jun 231, *Attorney-General v. Wansay*.  
 14. (1895) 2 Ch 649 (656) : 64 L J Ch 695 : 73 L T 269 : 44 W R (Eng) 22, *In re Nottage Jones v. Palmer*.



**\*10. ARTICLES OF ASSOCIATION OF A COMPANY.**

Twenty-five rupees.

*Exemption.*

Articles of any Association not formed for profit and registered under section 26 of the Indian Companies Act, 1882.

See also Memorandum of Association of a Company (No. 39).

*Provincial Amendments.*

**BENGAL** See Bengal Sch. IA, Art. 10.

**BIHAR** See Bihar Sch. IA, Art. 10.

**BOMBAY**

(i) *Substitute* the following, namely—

“10. ARTICLES OF ASSOCIATION OF A COMPANY—

(a) where the company has no share capital or the nominal share capital does not exceed Rs. 2,500 ;

(b) where the nominal share capital exceeds Rs. 2,500 but does not exceed Rs. 1,00,000 ;

(c) where the nominal share capital exceeds Rs. 1,00,000

*Exemption.*

Articles of any Association not formed for profit and registered under S.26 of the Indian Companies Act, 1913.”

Twenty-five rupees.

Fifty rupees.

One hundred rupees.

—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (d).* [1-4-1932.]

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See Central Provinces Sch. IA, Art. 10.

**MADRAS** See Madras Sch. IA, Art. 9.

**ORISSA** See Orissa Sch. IA, Art. 10.

**PUNJAB** See Punjab Sch. IA, Art. 10.

**SIND**

(i) Same as that of Bombay (i).—*Sind Act I of 1938.* [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendment.—*Sind.*

**UNITED PROVINCES** See United Provinces Sch. IA, Art. 10.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 10.

1. *Description of stamp.*—See Appendix C.

2. *Articles of Association.*—Articles of association are those contemplated by Ss. 17 to 19 of the Companies Act of 1913.

Where the articles are amended, no duty is payable in respect of such amendment. Thus, where a limited company possessing articles of association passed a special resolution in virtue of which an instrument was drawn up styled “articles of association” in supersession of the articles already possessed, it was held that the Companies Act did not contemplate any such thing as new articles of association and that the instrument in question was nothing more than the record of a special resolution, and, as such, did not require to be stamped under this article.<sup>1</sup>

\* [1879—Art. 8 ; 1869—Sch. II, Art. 33.]



3. **Exemption.**—This exemption is new. Under the Act of 1879, this exemption was notified as a remission. (See No. 11, Sch. II of the Government of India, Notification No. 5199 of 1st November 1895.)

The exemption excepts from the payment of duty those companies which are formed for promoting commerce, art, science, religion, charity, or any other useful object and registered under S. 26 of the Companies Act.

\*11. **ARTICLES OF CLERKSHIP** or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court.

Two hundred and fifty rupees.

#### Provincial Amendments.

**BIHAR** See Bihar Sch. IA, Art. 11.

**BOMBAY** See the Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See Central Provinces Sch. IA, Art. 11.

**MADRAS** See Madras Sch. IA, Art. 10.

**ORISSA** The Stamp duty leviable under this article is increased by a surcharge by S. 2 of Orissa Act II of 1945. [1-7-1945]. For the text of this Act see Appendix H.

**UNITED PROVINCES** See U. P. Sch. IA, Art. 11.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 11.

1. **Articles of clerkship.**—This is a deed of apprenticeship whereby a person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court. By laying down a separate duty for such an apprenticeship-deed the Legislature has omitted it from the operation of Art. 9. (See Art. 9.)

2. **Description of stamp.**—See Appendix C.

**ASSIGNMENT.** See Conveyance (No. 23), Transfer (No. 62), and Transfer of Lease (No. 63), as the case may be.

**ATTORNEY.** See Entry as an Attorney (No. 30), and Power-of-Attorney (No. 48).

**AUTHORITY TO ADOPT.** See Adoption-deed (No. 3).

\*12. **AWARD**, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—

(a) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ;

(b) in any other case .. .. .

The same duty as a Bond (No. 15) for such amount.

Five rupees

#### Exemption

Award under the "Bombay District Municipal Act, 1873, section 81 or the Bombay Hereditary Offices Act, 1874, section 18.

a. See now the Bombay District Municipal Act, 1901 (Bombay Act III of 1901).

\* [1879]—Art. 9 ; 1869—Sch. II Art. 41.]

\* [1879—Art. 10 ; 1869—Sch. I, Art. 22.]



## Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 12.

**BIHAR** See Bihar Sch. IA, Art. 12.

**BOMBAY**

(i) Omit clauses (a) and (b) of Art. 12.

—*Bombay Act II of 1932 Pt. IV, S 15 (5) (a)* [1.4-1932.]

(ii) For the two entries in column 2 of Art. 12, *substitute* the following, namely—  
“The same duty as a Bond (No. 15) for the amount or value of the property to which the award relates as set forth in such award subject to a maximum of twenty rupees.”

—*Bombay Act II of 1932, Pt. IV S. 15 (5) (b)*. [1.4-1932.]

(iii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See C. P. Sch. IA, Art. 12.

**MADRAS** See Madras Sch. IA, Art. 11.

**ORISSA** See Orissa Sch. IA, Art. 12.

**PUNJAB** See Punjab Sch. IA, Art. 12.

**SIND**

(i) Same as that of Bombay (i) ( and (ii) .*Sind Act I of 1938*. [31-3-1938]

(ii) See also Note given under Art. 1, Provincial Amendments—Sind.

**UNITED PROVINCES** See U. P. Sch. IA Art. 12

**WEST PUNJAB** See West Punjab Sch. IA, Art. 12.

## Reductions and Remissions.

For reductions and remissions under this article see Appendix D.

## SYNOPSIS

- |  |  |
|--|--|
| 1. Description of stamp. See Appendix C.       |  |
| 2. Scope of the article.                       |  |
| 3. “Not being an award directing a partition.” | 5. Valuation for purposes of stamp duty. |
| 4. “On a reference made otherwise than by      | 6. Exemptions.                           |
|  | 7. Unstamped award—Effect.               |

1. Description of stamp.—See Appendix C.

2. Scope of the article.—This article provides for the stamp duty chargeable on an award. The article itself gives the meaning of the word “award” for the purposes of the article. An award is the decision in writing of an arbitrator or umpire. But there are two conditions for the applicability of the article: (a) the award must not be one directing a partition; and (b) the award must not be one passed on reference through Court in the course of a suit.

In *Sybray v. White*<sup>1</sup> it has been held that an award stamp is only to be imposed on those instruments, which on their face purport to be awards. Thus, if two persons agree to refer a case to counsel, and to be bound by his opinion, the opinion is not liable to an award stamp if it does not contain the evidence of the agreement, i.e., the recital of the submission.

A document which is not signed by the arbitrators is not an award.<sup>2</sup> But the fact that an award is also signed by the parties will not make it any the less an award and it should be stamped as such except where it directs a partition.<sup>2a</sup> (See Note 3 and S. 2 (15) Note 16.)

## Article 12—NOTE 2

1. (1836) 150 E R 504 (507): 5 L J Ex 173.  
2. ('42) 29 AIR 1942 All 220 (221): 201 Ind

- Cas 578 (SB), *In re Tirathraj*.  
2a. ('42) 1942 Oudh W N (B R) 758 (759)  
*Munni v. Chhotey*.



An account between partners in a business, made out by a person appointed for that purpose, by which the parties are guided in their settlement, is not an award unless the account is binding upon them.<sup>3</sup>

Where several underwriters on the same policy agree to refer the demand of the assured on that policy a single stamp for the award is sufficient. It is not necessary that there should be as many stamps as there are underwriters.<sup>4</sup>

In the undermentioned case<sup>5</sup> the members of a joint Hindu family made a reference with regard to the division of their family properties and the arbitrators accordingly made a division. The members subsequently executed a document which was also signed by the arbitrators. The document purported to be a list of the properties allotted to one of the members and also recited that the parents were to enjoy certain lands during their lifetime. It was held that the document was neither an award nor a partition-deed but only a memorandum of the properties so allotted.

An agreement to refer a dispute to arbitration is chargeable with duty under Art. 5. But letters written by the parties authorising the arbitrators to decide a certain dispute do not require any stamp.<sup>6</sup> The appointment of an umpire made in writing by the arbitrators does not require any stamp.<sup>7</sup> See also Note 10 on Art. 5.

As to the distinction between an award and an appraisement see Note 3 on Article 8.

3. "Not being an award directing a partition."—These words have been added in the present Act as the definition of "instrument of partition" in S. 2 (15) has been enlarged so as to include an award directing a partition. The change was made with a view to prevent evasion of stamp duty by substituting awards for instruments of partition. The effect of this change is that an award directing a partition should now be stamped as an instrument of partition and not as an award. See also Note 16 on S. 2. (15).

4. "On a reference made otherwise than by an order of the Court in the course of a suit."—These words were first added by the Act of 1879. Under the Acts of 1860 and 1862 awards were not subject to any stamp duty. But under the Act of 1869 awards made on a reference to arbitration with or without the intervention of the Court were chargeable with duty under Sch. I Art. 22 of that Act. Since the passing of the Act of 1879, only private awards are liable to stamp duty. An award made on a reference through the Court made in the course of a suit is not chargeable with stamp duty under this article.

5. Valuation for purposes of stamp duty.—In calculating the stamp duty chargeable in respect of an award, the value of the property to which it relates as stated in the award should be taken into account. When the value of the property is not stated in the instrument, it has been held that its value for purposes of stamp

3. (1845) 153 E R 742 (743) : 15 L J Ex 191, *Goodyear v. Simpson*.

[See (1843) 5 Q B 128 (138) : 114 E R 1197 (1201) : 1 L T (OS) *Carr v. Smith*. (If the account was binding it would be an award and require a stamp as such.)]

4. (1815) 128 E R 999 (1001) : 6 Taunt

171 (175), *Goodson v. Forbes*.

5. ('84) 7 Mad 385 (387) (SB), *Reference under Stamp Act S. 49*.

6. ('95) 19 Bom 32 (33) (DB), *Gangaram Kushaba v. Narayan Babaji*.

7. (1812) 128 E R 567 (507) : 4 Taunt 704 (704), *Routledge v. Thornton*.



duty must be taken to be its market-value at the time of making the award.<sup>1</sup> But it is submitted that this view is not correct and that in such cases, the award will be chargeable under cl. (b) of this article. (See also S. 27, Note 2.) Where the subject-matter of an award is property having no market-value, e.g., a Buddhist Monastery, the stamp duty payable is the minimum under this article read with Art. 15.<sup>2</sup>

In the case of an award securing an annuity the valuation for purpose of stamp duty has to be made in accordance with the provisions of section 25.<sup>3</sup>

**6. Exemptions.**—In addition to the “Exemptions” mentioned in the article, the following should be noted :

An award given by the Inspector of Co-operative Societies appointed as arbitrator by the Registrar of Co-operative Societies under R. 22 framed by the Bengal Government under S. 43 of the Co-operative Societies Act, II of 1912, has the force of a decree and is not required to be stamped.<sup>1</sup>

An award made under the Land Acquisition Act (I of 1894) is exempt from stamp duty by virtue of S. 51 of that Act.

**7. Unstamped award—Effect.**—An unstamped award is not admissible in evidence and the Court has no power to act upon it or to pass a decree in terms thereof.<sup>1</sup>

But an award is complete as soon as it is pronounced and the absence of stamp does not make it incomplete.<sup>2</sup> Further, an unstamped award may be admitted in evidence on payment of duty and penalty.<sup>3</sup>

But an arbitrator signing an award on plain paper would be rendering himself liable to prosecution.<sup>4</sup> (See Note 14 on S. 62.)

#### Article 12—NOTE 5

1. ('35) 22 AIR 1935 Rang 204 (205) : 157 Ind Cas 44 (DB), *Maung P. Tun v. U. Sandiwara*. (Value given in the application to file the award was held to be material only for purposes of jurisdiction.)

2. ('35) 22 AIR 1935 Rang 204 (205) : 157 Ind Cas 44 (DB), *Maung Po Tun v. U. Sandiwara*.

3. ('96) 1896 All W N 197 (197) (SB), *Reference under Act No. X of 1879, S. 49*. (By an award a sum of Rs. 5 per mensem was made payable to a certain person but without any mention whether the sum was secured or intended to be secured to the heirs or representatives of the person to whom it was payable—*Held*, that the award ought to be stamped as a document securing an annuity on the value computed according to S. 25 (c) of the Act.)

#### Article 12—NOTE 6

1. ('33) 26 AIR 1933 Cal 695 (696) : 60 Cal 906 : 147 Ind Cas 177, *Pahar Ujalaba Co-operative Bank v. Adu Bhuia*.

#### Article 12—NOTE 7

1. ('28) 15 AIR 1928 Nag 166 (169) : 107 Ind

Cas 668, *Ram Kumar v. Kushalchand*.

2. ('24) 11 AIR 1924 Nag 204 (206, 207) : 78 Ind Cas 194, *Anantram v. Murlidhar*.

3. ('24) 11 AIR 1924 Nag 204 (206, 207) : 78 Ind Cas 194, *Anantram v. Murlidhar*.

('13) 1913 Pun Re No. 66 : 20 Ind Cas 491 (492) (DB), *Gowardhandas v. Kesho Ram*. (In proceeding under S. 20 of the second Schedule to the Code of Civil Procedure, an unstamped award may be admitted in evidence and filed in court, after payment of stamp duty and penalty under S. 35 of the Stamp Act. The fact that no suit to enforce the award is filed makes no difference.) [See also (1797 101 E R 873 (873) : 7 T R 95 (96), *Preston v. Eastwood*. (If an award be made on an improper stamp and no application is made to enforce the award, the Court will not set it aside on that ground. It can be rendered valid on payment of duty and penalty.)]

4.†('24) 11 AIR 1924 Oudh 240 (240) : 73 I. C. 336, *Emperor v. Puttoolal*. (Award directing partition.)

('28) 15 AIR 1928 Mag 166 (169) : 107 Ind Cas 668, *Ramkumar v. Kushalchand*. (Do.)



**\*13. BILL OF EXCHANGE** [as defined by S. 2 (2)<sup>a</sup>  
 \* \* \* \*] not being a Bond, bank-note or currency-  
 note—  
<sup>b</sup>[(a) \* \* \* \* ]

<sup>c</sup>[(b) where payable otherwise than on demand, but  
 not more than one year after date or sight—  
 Rs.

if the amount of the bill of note does not  
 exceed

if it exceeds Rs. 200 and does  
 not exceed

Ditto	400	ditto
Ditto	600	ditto
Ditto	800	ditto
Ditto	1,000	ditto
Ditto	1,200	ditto
Ditto	1,600	ditto
Ditto	2,500	ditto
Ditto	5,000	ditto
Ditto	7,500	ditto
Ditto	10,000	ditto
Ditto	15,000	ditto
Ditto	20,000	ditto
Ditto	25,000	ditto

and for every additional Rs. 10,000 or  
 part thereof in excess of Rs. 30,000

(c) where payable at more than one year after  
 date or sight.

If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
Rs. a. p.	Rs. a. p.	Rs. a. p.
200 0 3 0	0 2 0	0 1 0
400 0 6 0	0 3 0	0 2 0
600 0 9 0	0 5 0	0 3 0
800 0 12 0	0 6 0	0 4 0
1,000 0 15 0	0 8 0	0 5 0
1,200 1 2 0	0 9 0	0 6 0
1,600 1 8 0	0 12 0	0 8 0
2,500 2 4 0	1 2 0	0 12 0
5,000 4 8 0	2 4 0	1 8 0
7,500 6 12 0	3 6 0	2 4 0
10,000 9 0 0	4 8 0	3 0 0
15,000 13 8 0	6 12 0	4 8 0
20,000 18 0 0	9 0 0	6 0 0
25,000 22 8 0	11 4 0	7 8 0
30,000 27 0 0	13 8 0	9 0 0
9 0 0	4 8 0	3 0 0

The same duty as a Bond  
 (No. 15) for the same  
 amount.

a. The word, figure and brackets "and (3)" were omitted by S. 5 of the Indian Finance Act, 1927 (V of 1927).

b. Entry (a) was omitted, *ibid.*

c. This clause was substituted for the original clause (b) by S. 2 of the Indian Stamp (Amendment) Act, 1912 (I of 1912).

### Provincial Amendments.

#### SIND

Nothing in the Bombay Finance (Sind Amendment) Act, 1938, (Sind Act I of 1938) or in the Bombay Finance Act, 1932, (Bombay Act II of 1932), shall affect the rate of stamp duty chargeable under the Indian Stamp Act, 1899, in respect of a bill of exchange payable more than one year after date or sight.

—Sind Act I of 1938, S. 2 (2). [31-3-1938.]

\* [1879—Art. 11 ; 1869—Sch. I, Art. 1 and Sch. II, Art. 1 ; 1862—Sch. A, Art. 10 ; 1860—Sch. A, Arts. 4, 5.]



### Reductions and Remissions.

For reductions and remissions under this article see Appendix D.

#### Synopsis

- |  |                |
|--|----------------|
| 1. Description of stamp. See Appendix C.   | 4. Clause (b). |
| 2. Scope and applicability of the article. | 5. Clause (c). |
| 3. Bill of exchange payable on demand.     |                |

1. Description of stamp.—See Appendix C.

2. Scope and applicability of the article.—This article prescribes the stamp duty payable on bills of exchange. For the definition of the expression “bill of exchange,” see S. 2 (2). Bills payable otherwise than on demand but not more than one year after date or sight are assessed to a substantial amount of duty on an *ad valorem* scale. Bills payable more than one year after date or sight are assessed at a very much higher rate *ad valorem*.

Bank-notes are not liable to payment of any duty. They are not, like bills of exchange, mere securities or documents for debt, nor are they so esteemed, but are treated as money in the ordinary course and transactions of business by the general consent of mankind, and on payment of them, whenever a receipt is required, it is always given as for money, not as for securities or notes.<sup>1</sup> Bank notes are expressly excluded from the purview of the article.

Currency-notes are also similarly excluded and are not liable to any duty.

Hundis being included in the expression “bill of exchange” are chargeable under this article.

The duty payable on some of the instruments mentioned in Arts. 6 and 49 is the same as on a bill of exchange.

3. Bill of exchange payable on demand.—Clause (a) of this article under which a duty of one anna was chargeable on a bill of exchange payable on demand was omitted by S. 5 of the Indian Finance Act, 1927 (V of 1927), with effect from 1st July 1927. Such a bill, if executed on or after that date, is, therefore, free from stamp duty. A demand draft drawn by a bank on its branch payable on demand is a bill of exchange and is exempt from stamp duty by virtue of the above omission.<sup>1</sup>

See the undermentioned cases<sup>2</sup> bearing on cl. (a) when it was in force.

A letter of credit is a bill of exchange payable on demand according to the definition of the latter expression in S. 2 (3). It would, therefore, seem to require no

#### Article 13—NOTE 2

1. (1758) 97 E R 398 (401) : 1 Burr 452 (457), *Miller v. Race*.  
See also Wharton, *Law Lexicon*, 14th Edition p. 110.

#### Article 13—NOTE 3

1. ('28) 15 AIR 1928 Cal 566 (567, 569) : 56 Cal 233 : 115 I. C. 177 (SB), *In the matter of Stamp Act*.  
(‘33) Mad S M p. 81. (Citing G O Mis., 1448 Revenue, 27th July 1927—Cheques and Bills of Exchange payable on demand have been exempted from stamp-duty by the Finance Act V of 1927— This exemption

extends also to Hundis payable at sight and Demand Drafts.)

Also see S. 2 (2) and (3) Note 11.

2. ('08) 4 Low Bur Rul 320 (323) (FB), *In re Netherlands Trading Society*. (A second of exchange payable on demand does not require to be stamped with a stamp of one anna when the first of the exchange has been stamped with a stamp of one anna.)  
(‘18) 47 Ind Cas 561 (561) (Burma B. R.), *In re M. A. Raeburn & Co.* (An order on a firm to pay a specified sum of money to a certain person or bearer is a bill of exchange payable on demand and is chargeable with a duty of one anna.)



duty by reason of the omission of cl. (a). But Art. 37 is a special article which prescribes the stamp duty payable on this instrument. A duty will, therefore, be payable under that article, though not under this article.

In the undermentioned cases<sup>3</sup> arising under the previous Acts it was held that an order for payment of money which was not in the nature of a mercantile instrument was not a bill of exchange, and, therefore, required no stamp. Although the definition of a bill of exchange has now been extended in the present Act, such documents, if they are orders for payment on demand would be exempt from duty since the omission of cl. (a) by the Indian Finance Act, 1927.

4. **Clause(b).**—This clause prescribes the stamp duty payable on bills of exchange payable otherwise than on demand, but not more than one year after date or sight. The duty is payable *ad valorem* and to assess the duty a scale is given. The scale was revised by Act VI of 1910. The rates of duty were raised very considerably in the case of bills exceeding Rs. 1000. In the case of bills from Rs. 600 to Rs. 1000, the increase was much smaller, while the old rates of duty were retained on bills not exceeding Rs. 600, in order to exempt petty transactions from the enhancement of duty. This concession, however, produced unexpected results: advantage having been taken of it, in the case of big transactions, to escape the higher rate of duty by drawing a number of small bills instead of a single instrument. Considerable revenue was consequently lost which it was intended to be secured for Government by the amending Act of 1910. Act I of 1912 was, therefore, passed with a view to alter again the rates. It raised the duty on bills for amounts not exceeding Rs. 1000 in the same ratio as the enhancement which was effected in the case of bills exceeding Rs. 1000 by the amending Act of 1910.<sup>1</sup>

('03) 27 Bom 150 (153): 4 Bom L R 951 (FB), *Nandu Bai v. Gau*. (Letter by which a person authorizes his creditor to receive money from a third person who owes him money is not a bill of exchange payable on demand, but falls within the definition of conveyance and should be stamped as such.)

('89) 16 Cal 432 (435) (DB), *Ramen Chetty v. Mahomed Ghose*. (where a cheque bearing a stamp of one anna was found to have been post-dated by 17 days and it was contended that it was really a bill of exchange payable 17 days after date and as such inadmissible in evidence as insufficiently stamped, held that it was admissible in a suit to recover the amount of the cheque on its being dishonoured.)

(1876) 1 App. Cas 554 (564): 45 L J Q B 852: 35 L T 414: 24 W R (Eng) 1049, *Misa v. Currie* (A draft drawn for the amount of bills of exchange, purchased for transmission abroad, which amount by the usage of bill brokers is due on the first foreign post-day next after the purchase, and which draft is dated, as of that day, is an order for the payment of money on demand and falls within the description of a bill of exchange payable on demand and is liable to duty as such.)

(1871) 6 Q B 209 (212, 213): 40 L J Q B 141: 24 L T 130, *Bull v. O'Sullivan*. (A post-dated banker's cheque payable to order is available in the hands of a person who took

it with knowledge that it was post-dated, and is admissible in evidence with only a penny stamp.)

(1877) 2 Ex D 265 (267): 46 L J Q B 605: 36 L T 182: 25 W R (Eng) 305, *Gatty v. Fry*. (A stamped cheque payable to bearer, but post-dated, is admissible in evidence in an action brought, after the date of the cheque, by the holder, although he took with knowledge of the post-dating, since under the Stamp Act, 1870, the test of admissibility is whether the instrument appears, when tendered in evidence, to be sufficiently stamped.)

3. ('69) 1 N W P H C R 143 (144) (DB), *Sree Putbulwant Rao v. Futtehooddeen*. (A written direction given by a master to a servant for the payment of money belonging to the former in the hands of the latter was held to be not an order for the payment of money within the scope of the term used in Article 10, Sch. A, Act X of 1862, as amended by Act XXVI of 1867.)

('93) 17 Bom 684 (685) (FB), *Ratulal Rangildas v. Vriz Bhukhan*. (Plaintiff agreed to lend money to the defendant for payment of his trade debts etc.—In pursuance of the agreement the defendant gave his creditors "chits" for certain sums—Held, no stamp necessary for these chits.)

#### Article 13—NOTE 4

1. See the Statement of Objects and Reasons of the Bill No. 24 of 1911'



The Government of India by a Notification<sup>2</sup> have reduced, with effect from 13th January 1940, the duty chargeable on bills made or drawn in and payable in British India and coming under this clause, to two annas for every one thousand rupees or part thereof of the amount of the bill. By another Notification<sup>3</sup> the same reduction has been effected from 22nd March 1941 when the bills are payable in the areas mentioned in the schedule attached to the Notification. (See also the items mentioned above under the heading "Reductions and Remissions.")

A bill of exchange can, in view of Rs. 7 (1) of the Stamp Rules, 1925, be written on more than one stamped paper, provided that a portion of it is written on each stamp paper used and the aggregate value of the papers is sufficient.<sup>4</sup>

A bill of exchange cannot be stamped with an adhesive stamp if the value of the bill exceeds Rs. 200.<sup>5</sup>

5. **Clause (c).**—Where a bill of exchange is payable more than one year after date or sight, this clause provides that the same duty as a bond (Art. 15) for the same amount is chargeable in respect of such bill.

The rates of duty payable on bonds have been raised in some provinces by amending Art. 15. On the principles discussed in Schedules (General) Note B the enhancement will also affect the duty payable under this article.

It should be noted that the provision for bills drawn in sets of two or three is made only in the case of bills coming under cl. (b). In the case of bills falling under this clause no mention is made of any stamps on a second or a third of exchange in case they are drawn in sets. It is very significant that the next article contains a note that if a bill of lading is drawn in parts the proper stamp must be borne by each part. The absence of any such note in this article indicates that a stamp is required on only one part.<sup>1</sup>

The expression "after sight" in a bill of exchange means after acceptance, or noting for non-acceptance or protest for non-acceptance.<sup>2</sup>

#### \*14. BILL OF LADING (including a through bill of lading).

Four annas.

N.B.—If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.

\* [1879—Art. 12 ; 1869—Sch. II, Art. 9 ; 1862—Sch. A, Art. 11 ; 1860—Sch. A, Art. 6.]

2. Finance Department (Central Revenue) Notification No. 1, dated the 13th January 1940.

3. Finance Department (Central Revenue) Notification No. 2, dated the 22nd March 1941.

4. ('19) 6 AIR 1919 Cal 235 (238) : 51 Ind Cas 88 (DB), *Biswanath v. Gobinda*. Also see S. 2 (11) Note 9, S. 10 Note 16 and S. 13 Note 4.

5. ('80) 2 Mad 173 (174) (DB), *Devaji v. Rama Krishniah*.

('82) 8 Cal 721-723 : 11 Cal L Rep 310 (DB), *Radhakanth Shaha v. Abhoychurn Mitter*.

Article 13—NOTE 5

1. ('08) 4 Low Bur Rul 320 (323) (FB), *In re Netherlands Trading Society*.

2. Section 21, Negotiable Instruments Act, 1881.



**Exemptions.**

(a) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the <sup>a</sup>Indian Ports Act, 1889, and are to be delivered at another place within the limits of the same port.

(b) <sup>b</sup>[Bill of lading when executed out of the Provinces] and relating to property to be delivered in <sup>b</sup>[the Provinces.]

a. See now the Indian Ports Act, 1908 (XV of 1908).

b. Substituted for "British India" by I. O.

**Provincial Amendments.**

**BENGAL** See Bengal Sch. IA, Art. 14.

**BOMBAY**

The duty payable under Art. 14 was raised to eight annas by Bombay Act II of 1932, Pt. IV, S. 15 (5) (b) (1-4-1932) but this amendment was deleted by Bombay Act VII of 1938, S. 4 (1). [31-3-1938.]

**MADRAS** See Madras Sch. IA, Art. 12.

**ORISSA** Same as that of Madras.—*Orissa Act VI of 1943, S. 2.*

**PUNJAB** See Punjab Sch. IA, Art. 14.

**SIND**

The amendment made in Art. 14 by Bombay Act II of 1932, Pt. IV, S. 15 (5) (b) does not apply to Sind.—See *Sind Act I of 1938, S. 2 (1)*. [31-3-1938.]

**WEST PUNJAB** See West Punjab Sch. IA, Art. 14.

**Reductions and Remissions.**

For reductions and remissions under this article see Appendix D.

1. **Bill of Lading.**—For the meaning of bill of lading see Notes on S. 2 (4).

Parcel receipts granted by the British India Steam Navigation Company are in the nature of bills of lading and should bear a stamp of four annas.<sup>1</sup>

In the undermentioned case<sup>2</sup> it was held by the Calcutta High Court that the term 'bill of lading' was not confined to the carriage of goods by a sea going vessel and applied equally to documents given by Inland Rivers Steam Navigation Company relating to inland navigation. The duty on bills of lading issued by Inland Steamer Companies has now been remitted.<sup>3</sup>

2. **Exemption (a).**—This exemption was first introduced by the Act of 1879. It applies only when the goods are received and are to be delivered within the limits of the same port.

**Article 14—NOTE 1**

- |   |   |
|---|---|
| <p>1. ('33) Mad S M page 82. (Citing B P 425, Land Revenue, 25th June 1889.)</p> <p>2. ('03) 30 Cal 565 (574) (SB), Reference</p> | <p>under Stamp Act of 1899.</p> <p>Also see S. 2 (4) Note 1.</p> <p>3. ('33) Mad S M page 82. (Citing B P 15/149-R, Mis., 22nd January 1904.)</p> |
|---|---|



The words "the Indian Ports Act, 1889" should now be taken to refer to the Indian Ports Act, XV of 1908. Port, according to the definition in that Act, includes also any part of a river or channel in which that Act is for the time being in force.

3. **Exemption. (b).**—The Act of 1879 did not contain this exemption. The exemption was first introduced by Notification No. 1733 of 16th January 1882. The present exemption represents this notification.

This exemption by exempting from stamp duty bills of lading executed out of British India and relating to property to be delivered in British India forms an exception to the provisions of S. 3 (c) of this Act.

4. **Description of stamp.**—See Appendix C.

\*15. **BOND** [as defined by section 2 (5)] not being a De-benture (No. 27) and not being otherwise provided for by this Act, or by the Court-fees Act, 1870,—where the amount or value secured does not exceed Rs. 10.

where it exceeds Rs. 10 and does not

			Rs.
		exceed	50
Ditto	50	ditto	100
Ditto	100	ditto	200
Ditto	200	ditto	300
Ditto	300	ditto	400
Ditto	400	ditto	500
Ditto	500	ditto	600
Ditto	600	ditto	700
Ditto	700	ditto	800
Ditto	800	ditto	900
Ditto	900	ditto	1,000

Two annas.

Four annas.

Eight annas.

One rupee.

One rupee eight annas.

Two rupees.

Two rupees eight annas.

Three rupees.

Three rupees eight annas.

Four rupees.

Four rupees eight annas.

Five rupees.

and for every Rs. 500 or part thereof in excess of Rs. 1,000.

Two rupees eight annas.

See Administration-Bond (No. 2), Bottomry Bond (No. 16), Customs Bond (No. 26). Indemnity-Bond (No. 34), Respondentia Bond (No. 56), Security Bond (No. 57).

#### *Exemptions.*

**Bond, when executed by—**

(a) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act ;

(b) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.

\* [1879—Art. 13 ; 1869—Sch. I, Art. 5 ; 1862—Sch. A, Arts. 12, 15 to 19 ; 1860—Sch. A, Arts. 8, 10 to 12, 14.]



## Provincial Amendments.

BENGAL See Bengal Sch. IA, Art. 15.

BIHAR See Bihar Sch. IA, Art. 15.

## BOMBAY

(i) In column 2 of Art. 15 the first four entries are the same as in the Central Act; thereafter *substitute*—

For the words	"One rupee eight annas"	the words	"Two rupees four annas"
"	"Two rupees"	"	"Three rupees"
"	"Two rupees eight annas"	"	"Three rupees twelve annas"
"	"Three rupees"	"	"Four rupees eight annas"
"	"Three rupees eight annas"	"	"Five rupees four annas"
"	"Four rupees"	"	"Six rupees"
"	"Four rupees eight annas"	"	"Six rupees twelve annas"
"	"Five rupees"	"	"Seven rupees eight annas"
"	"Two rupees eight annas"	"	"Three rupees twelve annas"

—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (b).* [1-4-1932.]

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

CENTRAL PROVINCES See Central Provinces Sch. IA, Art. 15.

MADRAS See Madras Sch. IA, Art. 13.

ORISSA See Orissa Sch. IA, Art. 15.

PUNJAB See Punjab Sch. IA, Art. 15.

## SIND

(i) Same as that of Bombay (i).—*Sind Act I of 1938.* [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments.—*Sind.*

UNITED PROVINCES See United Provinces Sch. IA, Art. 15.

WEST PUNJAB See West Punjab Sch. IA, Art. 15.

## Reductions and Remissions.

For reductions and remissions under this article see Appendix D.

## SYNOPSIS

- |  |  |
|--|--|
| 1. "Bond as defined by section 2 (5)." See Notes on Section 2 (5). | 5. "The amount or value secured."                |
| 2. "Not being a debenture."  | 6. Combination of bond and other instruments.    |
| 3. "Not being otherwise provided for by this Act."                 | 7. Section 40, U. P. Agriculturists' Relief Act. |
| 4. "Or by the Court-fees Act, 1870."                               | 8. Description of stamp. See Appendix C.         |

1. "Bond as defined by Section 2 (5)."—See Notes on section 2 (5).

2. "Not being a debenture."—In order that this article may apply to a bond it is necessary, *inter alia*, that it should not be a "debenture." As to the meaning of the word "debenture" see Note 1 on Art. 27.



The article is stated to apply to a bond "not being a debenture and not being otherwise provided for by this Act." The question arises whether in view of the expression "not otherwise provided for by this Act" the words "not being a debenture" are not redundant. These latter words are not redundant as the words "not otherwise provided for by this Act" mean "not otherwise provided for *as a bond* by this Act." See Note 3.

3. "Not being otherwise provided for by this Act."—There is a difference of opinion as to the interpretation of these words. According to one view, these words mean "not being provided for by any other provision of this Act *dealing with bonds*."<sup>1</sup> In other words, according to this view, it is only where the other provision under which the instrument falls deals with *bonds* that the applicability of this article (to an instrument which amounts to a bond as defined by S. 2 (5) is excluded. Other articles in the schedule dealing with *bonds* are enumerated in the Note added to this article by the Legislature, e.g., Administration-bond, (No. 2) Bottomry bond (No. 16), etc. According to this view, it is only where the instrument falls under one of these articles that it can be held to be "otherwise provided for" within the meaning of this article. But where the other provision is not one dealing with *bonds* at all, an instrument containing a bond must be held to be not otherwise provided for by this Act and will fall within this article although it is also covered by some other article in the schedule.

The other view takes the words "not otherwise provided for" in an unrestricted sense as simply meaning "not provided for in any other part of the Act." Hence, according to this view, this article will not apply to an instrument falling within *any* other article irrespective of the question whether such other article deals with *bonds* or not.<sup>2</sup>

The two views may be illustrated with reference to an example. Suppose an instrument amounts to a bond as defined by S. 2 (5) and also to a mortgage-deed (Art. 40). According to the *first* view, such an instrument is not "otherwise provided for by this Act" as Art. 40 does not deal with *bonds* of any kind. But, according to the *second* view, the instrument must be regarded as "otherwise provided for" by this Act and, therefore, as not being within the scope of this article.

But, suppose an instrument constitutes a bond as defined by S. 2 (5) and also a security bond chargeable under Art. 57. In such a case, according to *both* the views, this article will not apply.<sup>3</sup> It is submitted that the *first* view is correct. Otherwise, the express mention of "debenture" and the Note at the end of article would be meaningless.

4. "Or by the Court-fees Act, 1870."—This is a residuary article *intended for bonds* not otherwise provided for by the Stamp Act or by the Court-fees Act. The words "Or by the Court-fees Act, 1870" were added after the words "Bond not otherwise provided for by this Act" in Art. 13 of Act I of 1879 (corresponding to the present Art. 15) by S. 18 (4) of Act VI of 1889. The provisions in the Court-fees

#### Article 15—NOTE 3

1. ('41) 28 AIR 1941 All 243 (258, 266) : I L R (1941) All 471 : 195 Ind Cas 791 (FB), *L. H. Sugar Factory, Pilibhi v. Moti*. (Per Verma and Mulla, JJ.)

2. ('41) 28 AIR 1941 All 243 (255) : I L R (1941) All 471 : 195 Ind Cas 791 (FB), *L. H. Sugar Factory, Pilibhit v. Moti*. (Per Bajpai and Dar, JJ.)

[See ('36) 23 AIR 1936 All 481 (485) : 58 All 1083 : 163 Ind Cas 614 (SB), *In re Board of Revenue U. P.* (NOTE.—This decision is

self-contradictory. It holds that this Article does *not* apply to an instrument constituting a 'bond' and an "agreement" as the instrument is "otherwise provided for" under Art. 5. At the same time the decision holds that an instrument constituting a "bond and a mortgage-deed" will be governed by S. 6—Which position is only consistent with this Article *applying* to the instrument.)]

3. ('36) 23 AIR 1936 Lah 45 (46) : 17 Lah 74 : 160 Ind Cas 276 (SB), *In the matter of Stamp Duty*.



Act applicable to bonds are contained in Art. 6, Sch. II which prescribes a court-fee of eight-annas for a "Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for by this Act" and S. 19 cl. (XV) which exempts bail-bonds in criminal cases from payment of court-fee. Before the above amendment it was held in *Kulwanta v. Mahabir Prasad*<sup>1</sup> that a bond given under the order of a Court as security by an appellant for the costs of the respondent in the appeal required a double duty under Art. 13 Sch. I of the Stamp Act of 1879 and under Art. 6 Sch. II of the Court-fees Act, 1870. By the amendment it was made clear that if an instrument falls under Art. 6, Sch. II or S. 19 cl. (XV) of the Court-fees Act it does not require stamp duty under this article.

A security bond given under the Civil Procedure Code, S. 55 (4),<sup>2</sup> or under O. 32, R. 6 (2)<sup>3</sup> or under O. 41 R. 5 or 6<sup>4</sup> or for stay of execution in a Small Cause Court pending a decision by the High Court<sup>5</sup> or for production of attached live-stock when called for<sup>6</sup> or given by a receiver appointed by the Court for the due performance of his duties<sup>7</sup> is a bond given in pursuance of an order made by a Court under a section of the Code of Civil Procedure, 1908, within the meaning of Art. 6, Sch. II of the Court-fees Act.

It has been held in the undermentioned recent Madras decision<sup>8</sup> that a security bond given under the proviso to S. 17 (1) of the Provincial Small Cause Courts Act, 1887, falls within Art. 6, Sch. II of the Court-fees Act. But a contrary view was taken in the undermentioned Bombay case<sup>9</sup> that it is governed not by Art. 6, Sch. II of the Court-fees Act but by Art. 13 of the Stamp Act, I of 1879.

#### Article 15—NOTE 4

1. ('88) 11 All 16 (17): 1888 All W N 281 (FB).

NOTE.—5 Suth W R Mis., 47 (48) deciding that a security bond given for costs of appeal to Privy Council came under Art. 12 Ach. A of Act X of 1862 (which was a residuary article for bonds) and not under Art. 2 Sch. B of the Act (which prescribed duty for bail or security bond) must also be held no longer good law.

2. ('33) 20 AIR 1933 Lah 89 (90): 14 Lah 284: 141 Ind Cas 301 (SB), *Ghulam Muhammad v. Emperor*.

[See however ('30) 17 AIR 1930 Lah 854 (854): 127 Ind Cas 361, *Bahagat Ram v. Rattanchand*. (Security bond given under S. 55, C. P. C.—Lower Court holding that document was inadmissible in evidence as being not properly stamped—Held, opportunity should have been given for payment of duty and penalty under S. 35, Stamp Act.)]

- 3.† ('25) 12 AIR 1925 Cal 906 (907): 53 Cal 101: 89 Ind Cas 289 (SB), *Reference under S. 113 read with O. 46 R. 1, Civil P. C.* (AIR 1918 Cal 125 L Overruled.)

('29) 16 AIR 1929 Lah 205 (205): 117 Ind Cas 226, *Mahomed Ewaz v. Haji Naneh Mian*. (In a case under O. 32 R. 6, C. P. C. Article 57, Stamp Act, would also apply.)

4. ('47) 34 AIR 1947 Nag 26 (31): ILR (1946) Nag 49, *Dadoo Balaji v. Kanhailal Dhana-ram*.

†('36) 23 AIR 1936 Sind 41 (42): 30 Sind L R 1: 161 Ind Cas 945 (DB), *In re Reference by the District Registrar, Dadu*.

- ('34) 21 AIR 1934 Lah 228 (229): 14 Lah 708: 143 Ind Cas 12 (DB), *Jawalamal v. Gianchand*.

[But see ('25) 12 AIR 1925 Lah 552 (554): 91 Ind Cas 772, *Guranditta Mal v. Gurdas Mal Ramchand*. (Not followed in AIR 1934 Lah 228: 14 Lah 708 and AIR 1929 Lah 205.)]

5. ('29) 16 AIR 1929 Lah 205 (205): 117 Ind Cas 226, *Mahomed Ewaz v. Naneh Mian*.

6. ('14) 7 AIR 1914 Mad 652 (654): 37 Mad 17: 20 Ind Cas 775 (SB), *In re Reference under Stamp Act 1899*. (Security bond executed for production of attached live-stock under R. 7 of Civil Courts Guide made under powers conferred by S. 269, of old C. P. C., is a bond given in pursuance of an order made by a Court under a section of C. P. C.)

- ('23) 10 AIR 1923 Cal 269 (270): 49 Cal 997: 68 Ind Cas 730 (DB), *Sarabo Musalmani v. Safar Mandal*.

7. ('20) 7 AIR 1920 Mad 939 (940): 43 Mad 363: 57 Ind Cas 184 (BF), *Amrithammal v. Maddalakaran*.

('33) Mad S M page 87. (Referred case 7 of 1919 in B P 264-R., Mis., 18th March 1920.)

8. ('35) 22 AIR 1935 Mad 380 (381): 58 Mad 687: 155 Ind Cas 559 (FB), *Peda Pit-chamma v. Pedamuneyya*.

9. ('97) 1897 Bom P J 167 (SB), *Civil Reference No. 7 of 1897*.



A security bond given under S. 21 of the Provincial Insolvency Act is not governed by Art. 6, Sch. II of the Court-fees Act. It has been held that Art. 57, Sch. I of the Stamp Act and not Art. 15, Sch. I applies to such a bond.<sup>10</sup>

It does not follow that because a security bond falls within the scope of Art. 6, Sch. II of the Court-fees Act it is not chargeable under the Stamp Act at all. If it comes under this article (i.e., Art. 15) it will not be chargeable under the Stamp Act;<sup>11</sup> but if it comes under some other provisions of the Stamp Act such as Art. 40 or Art. 57 it will be chargeable also with stamp duty<sup>12</sup> because the reference to Court-fees Act is made only in this article and not in others. See also Art. 57 Note 6 and Notes on Art. 6, Sch. II of A.I.R. commentaries on the Court-fees Act, 1870, 2nd (1949) Edn.

5. "The amount or value secured."—*Ad valorem* stamp duty is chargeable under the article on the amount or value secured by the instrument, according to the scale given. Where an instrument falls within cl. (c) of S. 2 (5) "the amount or value secured" by the instrument is the value of the grain or other agricultural produce, agreed to be made over to the creditor, as fixed by the instrument itself. A rise in the price of the grain or agricultural produce at the time of the institution

10. ('36) 23 AIR (1936) Lah 45 (46): 17 Lah 74: 160 Ind Cas 276 (SB), *In the matter of Stamp Duty*.

11. ('47) 34 AIR 1947 Nag 26 (31): ILR (1946) Nag 49, *Dadoo Balaji v. Kanhaialal Dhanaram*. (Security bond under O 41 R S Civil P. C.)

\*('25) 12 AIR 1925 Cal 906 (907): 53 Cal 101: 89 Ind Cas 289 (SB), *Reference under S. 113 read with O. 46 R. 1, C.P.C.*

('33) 20 AIR 1933 Lah 89 (90): 14 Lah 284: 141 Ind Cas 301 (SB), *Ghulam Mohammad v. Emperor*. (Security bond given under S. 55 (4), C. P. C., Art. 40 not applicable as no property is mortgaged—Article 57 also not applicable.)

('29) 16 AIR 1929 Lah 205 (205): 117 Ind Cas 226, *Mahomed Ewaz v. Naneh Mian*. (Security bond given for stay of execution in Small Cause Court pending decision by High Court.)

('35) 22 AIR 1935 Mad 380 (381): 58 Mad 687: 155 Ind Cas 559 (FB), *Peda Pitchamma v. Pela Muneyya*. (Security bond given under proviso to S. 17 (1), of Provincial Small Cause Court Act.)

('14) 1 AIR 1914 Mad 652 (654): 37 Mad 17: 20 Ind Cas 775 (SB), *In re Reference under Stamp Act 1890*. (Security bond executed for production of attached live-stock under R. 7, Civil Courts Guide made under power conferred on Local Government by S. 269 of old C. P. C.)

('23) 10 AIR 1923 Cal 269 (270): 49 Cal 997: 68 Ind Cas 730 (DB), *Sarabo Musalmani v. Safar Mandal*. (Security bond given in a claim case for producing certain attached goats.)

('34) 21 AIR 1934 Lah 228 (229): 14 Lah 708: 143 Ind Cas 12 (DB), *Jewalamal v. Gianchand*. (AIR 1933 Lah 228 followed.)

('33) Mad S M p. 87. (Citing B P 1393-R.,

Mis., 13th November 1913—Certain person executing document as sureties for safe custody of distrained property of judgment-debtor and binding themselves to pay certain amount to Court—Obligation to pay money was to become void on production of the properties before Court—*Held*, Art. 6 Sch. 11, Court-fee Act, applied and no duty was payable under Stamp Act.)

12. \*('25) 12 AIR 1925 Cal 906 (907): 53 Cal 101: 89 Ind Cas 289 (SB), *Reference under Section 113 read with O. 46 R.1., C.P.C.* ('36) 23 AIR 1936 Sind 41 (42): 30 Sind LR 1: 161 Ind Cas 945 (DB), *In re Reference by the District Registrar, Dadu*. (Security bond given under O. 41 R. 5 or 6, C. P.C.—Art. 57, Stamp, Act, applies.)

('29) 16 AIR 1929 Lah 205 (205): 117 Ind Cas 226, *Mahomed Ewaz Naneh Mian*. (AIR 1925 Cal 906: 53 Cal 101 followed.)

('20) 7 AIR 1920 Mad 939 (940): 43 Mad 363: 57 Ind Cas 184 (FB), *Amirthammal v. Maddalakaram*. (Security bond given by receiver—Immoveable property also mortgaged—*Held*, Art. 40, Stamp Act, applies.)

('33) Mad S M p. 87. (Citing Referred Case 19 of 1911 and B Ps 164/1100-R., Mis., 7th September 1912, 264-R., Mis., 18th March 1920. A, by a certain document, binding himself to pay to Registrar, Court of Small Causes, Madras, certain sum, being amount of decree of said Court and immovable property shown as security for the said sum.—*Held*, document was liable to duty under Art. 6 Sch. II, Court-fees Act, and under Art. 40 (b) Sch. I, Stamp Act.)

('33) Mad S M p. 87. (Citing Referred Case 7 of 1919 in B P 264-R., Mis., 18th March 1920. Instrument executed in favour of Civil Court by Receiver binding himself and his properties—*Held*, bond should be stamped both under Art. 6 Sch. II, Court-fees Act, and under Art. 40 Sch. I, Stamp Act.)



of a suit on the bond will not make the instrument insufficiently stamped.<sup>1</sup> But where the instrument is silent as to the money value of the grain the market-value of the grain at the time of execution of the bond will be the amount on which stamp duty would be chargeable.<sup>2</sup>

A document stipulated as follows: "You have caused me to open a shop....to which you have given (as a loan) Rs. 400 *sehasai*; you have entrusted me with the shop after having settled that you shall have one share, and I shall have one and a half-share, in the profits of the firm that may be found to have been realized by the firm, after deducting the amount lent by you, with interest at the rate of ten annas per cent. per mensem and Rs. 9 as the annual rent of your shop; I am duly to give you the account of the same whenever you ask for it; this firm has been opened in the month of *Magshar* of *Sambat* 1935; I am to give you account of the same since that date, I shall pay up your money when the account is settled; the profits, that may remain after paying up your money, shall be divided between us according to the aforesaid agreement." It was held that the instrument was a bond for Rs. 350 *plus possible profits* and that it should have been stamped with a stamp of at least Rs. 2-8-0.<sup>3</sup> It is not understood how the figure of Rs. 350 is arrived at when the document itself mentions Rs. 400. So also it is not known how the amount of Rs. 2-8-0 is stated as the stamp duty because for that stamp duty the amount of the bond must have been above Rs. 400 but not exceeding Rs. 500. It seems that the figure 350 is a mistake for the correct figure 400 which together with the possible profits will be the proper amount for a stamp duty of Rs. 2-8-0.

Where A agreed to pay £2,20,000 to B but was entitled under the agreement to deduct £40,000 by way of certain compensation and other expenses it was held that the instrument must be stamped as a bond for the payment of £2,20,000.<sup>4</sup>

Where interest accrues under the bond itself, stamp duty is chargeable only on the principal, and not on the amount of the interest<sup>5</sup> (see S. 23); but where interest according to *savai* system is added to an old debt and the whole converted into principal, stamp duty is payable on the total amount.<sup>6</sup> In the undermentioned case,<sup>7</sup> however, a bond for a loan of Rs. 100 stipulated that the obligor would pay twice this amount, including Rs. 100 for interest, total Rs. 200 in eight yearly instalments. It was held that the amount secured by the bond was Rs. 200. See also S. 23 and Notes thereon.

As to the question whether in calculating the amount secured the penalty named in a bond is to be taken into account, see Note 18 on section 2 (5).

See also the undermentioned case.<sup>8</sup>

#### Article 15—NOTE 5

1. ('86) 13 Cal 268 (269) (DB), *Bhairab Chundra v. Alek Jan*.

Also see S. 27 Note 5.

2. ('83) 7 Bom 137 (139) (FB), *Magandas Khemchand v. Ramchandra Hiraji*.

3. ('83) 1883 Bom P J 14 (DB), *Dhanji Bhulji v. Vohra Bhaiji*.

Also see S. 2 (5) Note 10.

4. ('92) 15 Mad 193 (198) (SB), *Reference 5 Under Stamp Act S. 46*.

.† ('87) 1887 Bom P J 35 (FB), *Samsudin v. Dhakli*.

(1901) 3 Bom L R 133 (135) (FB), *Vithu v. Nathu Sao*.

Also see S. 23 Note 2.

6. ('82) 1882 Bom P J 352 (FB), *Khando*

*v. Imam*.

7. ('990) 26 Cal 179 (181) (FB), *Sambhu Chandra Bepari v. Krishnacharan Bepari*.

8. ('41) 28 A I R 1941 All 243 (252, 268): I L R (1941) All 471: 195 Ind Cas 791 (FB), *L. H. Sugar Factory, Pilibhit v. Moti*. (A document stipulated as follows: "I, M, have taken....a sum of Rs. 35 in cash as a peshgi (advance money) on an interest payable at the rate of 2 pies per rupee per mensem from L.....Whenever a necessity will dictate. I shall, in addition to the zar-i-peshgi aforesaid, continue to take under receipts further sums from the said creditor, the aggregate amount whereof will come to Rs. 100"—Held that the amount secured was not Rs. 35 or Rs. 135 but Rs. 100.)



6. **Combination of bond and other instruments.**—An instrument may constitute both a bond as defined in S. 2 (5) and some other matter. In such a case, if the instrument comprises *distinct* matters, S. 5 will apply and the aggregate of the duties that would have been payable had separate instruments been executed would be chargeable.<sup>1</sup>

Where the instrument does not comprise distinct matters, the following positions arise :

1. The instrument may amount to a bond as defined in S. 2 (5) and also a debenture. (Article 27.)
2. The instrument may amount to a bond as defined in S. 2 (5) and also any particular kind of *bond* specially provided for in the schedule, e.g., Administration-bond, Bottomry bond, Customs bond, etc.
3. The instrument may amount to a bond as defined in S. 2 (5) and also some instrument other than a bond or debenture.

In 1 and 2 this article will not apply as such cases have in terms been excluded from its purview. Such instruments will be governed by Art. 27 or any other article that may be applicable to the particular case. There is no question of applying S. 6 in such cases, as, in consequence of the specific exclusion contained in this article, the instrument falls within only one description in the schedule.

In 3, the instrument will answer the description contained in this article as well as that in another article. Hence, S. 6 will apply and the instrument will be chargeable with the higher of the duties calculated under the two articles.<sup>2</sup> See also S. 2 (5), Note 13.

7. **Section 40, U. P. Agriculturists' Relief Act.**—Section 40 (1) of the U. P. Agriculturists' Relief Act, XXVII of 1934, provides as follows : "Notwithstanding anything contained in the Indian Stamp Act, 1899, and the rules made under the Indian Registration Act, 1908, the stamp duty and the registration and copying fees on bonds of value or amount not exceeding rupees three thousand, executed by an agriculturist and registered under the Indian Registration Act shall be as laid down in Schedule V."

For the text of material sections and Sch. V of the U. P. Agriculturists' Relief Act, 1934, see Appendix J.

#### Article 15--NOTE 6

1. ('33) Mad S M page 86. (Citing B. P. 1352-R., Mis., 6th July 1907. A executed in favour of B na instrument by which A undertook to pay B, for a term of three years, a rent of Rs. 70 per mensem for certain premises and Rs. 10 per month for three years for use of furniture and good-will of the trade or business carried on in the said premises in the name of C. The Board agreed with the Collector in considering that the document should bear a stamp of Rs. 4-8-0 under Article 35 (a) (ii) for the lease of the premises and Rs. 2 under Article 15 as a bond for the entire sum of Rs. 360 payable during the three years for the use of furniture and good-will of trade or business.) [See also ('05) 7 Bom L R 929 (931) (FB), *Ramchandra v. Dhondoo*. (Rent note providing for payment of rent and for payment of balance for previous year—*Held*, so far as instrument was lease it was exempt

from duty but agreement for payment of balance for previous year amounted to bond and should be stamped under Art. 15 Sch. I.)]

- 2.†('36) 23 AIR 1936 All 481 (482) : 58 All 1083 : 163 Ind Cas 614 (SB), *In re Board of Revenue U. P.* (Bond and mortgage.)

('41) 28 AIR 1941 All 243 (260, 267) : I L R (1941) All 471 : 195 Ind Cas 791 (FB), *L. H. Sugar Factory, Pilibhi v. Moti*. (Per Verma and Mulla, JJ; Dar and Bajpai, JJ. contra—Article 15 will apply only if no other Article is applicable.)

('87) 9 All 585 (589) : 1887 All W N 190 (FB), *In the matter of Gajraj Singh*. (Bond and mortgage-deed.)

('33) Mad S M page 84. (Citing B. P. 2063, 18th July 1883. Agreement to deliver two candies of coffee in consideration of Rs. 200 found to be due on a statement of accounts—Immoveable property mortgaged as security for fulfilment of contract—*Held*, document



The section applies only to bonds executed by agriculturists *and registered* and cannot be availed of where the document is not registered.<sup>1</sup>

8. Description of stamp.—See Appendix. C

\*16. **BOTTOMRY BOND**, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.

The same duty as a Bond (No. 15) for the same amount.

### Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 16.

**BIHAR** The stamp duty leviable under this article is increased by a surcharge :  
see S. 5 of Bihar Act XXV of 1948. [1-4-1948] in Appendix H.

**BOMBAY** See the Note given under Art. 1, Provincial Amendments (Bombay).

**MADRAS** See Madras Sch. IA, Art. 14.

**ORISSA** See Orissa Sch. IA, Art. 16.

**PUNJAB** See Punjab Sch. IA, Art. 16.

**UNITED PROVINCES** See United Provinces Sch. IA, Art. 16.

**WEST PUNJAB** See West Sch. IA, Art. 16.

1. **Bottomry bond, nature of.**—Bottomry bonds are contracts in the nature of a mortgage of a ship on which the owner or the master acting for the owner borrows money in circumstances of unforeseen necessity in a port of distress to enable him to repair the ship or to pay for the repairs and despatch of the vessel for the completion of her voyage and pledges the keel or bottom of the ship *pars pro tota* (a part for the whole) for repayment. If the ship is lost in the course of her voyage by any of the perils enumerated in the contract, the lender on the bottomry bond loses his money ; but if the ship arrives safe then he recovers the loan with interest which is called maritime interest and may be in proportion to the risk of the voyage.<sup>1</sup>

As seen above, the owner of the ship can give a bottomry bond.<sup>2</sup> It is the vital principle of this species of bonds that they shall have been taken where the owner is known to have no credit, no resources for obtaining necessary supplies. It is this state of unprovided necessity that alone supports these bonds, and the absence of the necessity is their undoing.<sup>3</sup> Where money was advanced on the

\* [1879—Art. 15 ; 1869—Sch. I, Art. 6 ; 1862—Sch. A, Art. 14 ; 1860—Sch. A, Art. 9.]

fell under both Art. 15 and Art. 40 (b) and may, under S. 6, be stamped under either article, duty in each case being the same.) [See also ('80) 4 Bom 19 (20) : 4 Ind Jur 413 (FB), *Chimnaji v. Ramu*. (Instrument constituting a bond and agreement—*Held*, proper duty would have been eight annas for agreement, that being a higher duty—View that plaintiff may abandon claim on agreement and recover amount due under bond is not correct—See S. 6 Note 5.)] Also see S. 2 (5) Note 13, S. 2 (17) Note 22 and S. 6 Now 7.

Article 15—NOTE 7

1. ('41) 28 AIR 1941 All 243 (255) : 1 L R (1941) All 471 : 195 Ind Cas 791 (FB), *L. H.*

*Sugar Factory. Pilibhit v. Moti.* (Per Full Bench ; Iqbal Ahmad, Ag. C. J., dissenting.)

Article 16—NOTE 1

1. *Hlasbury's Laws of England*, Vol. I, pages 65, 66.  
2. (1829) 166 E R 251 (254, 255) : 2 Hagg Adm 294, *The Duke of Bedford*. (It is the general character of bottomry bonds to supersede even former bonds of the same species, on the supposition that they operate for the protection of all prior interests.) ('99) 22 Mad 26 (29) : 8 Mad L Jour 159 (DB), *A. K. Sahib Mercoyar v. R. Chetti*.  
3. (1823) 166 E R 61 (63) : 1 Hagg Adm 169 (175, 176), *The "Nelson."*



personal security of the owner who also executed a hypothecation bond in respect of the ship, it was held that the transaction cannot be regarded as a bottomry bond.<sup>4</sup>

If the necessities can be provided on the personal credit of the owners or on a bill of exchange drawn by the master upon them, a bottomry bond cannot *afterwards* be given to secure the same debt, but a bottomry bond may be given at the same time and as a collateral security for bills of exchange drawn on the owner.<sup>5</sup>

2. **Section 3, Proviso (2) and this article.**—Section 3, proviso (2) provides *inter alia* that no duty shall be chargeable in respect of any instrument of mortgage of any ship or vessel registered under the Acts specified in that section. This article will, therefore, not apply in the case of bottomry bonds given in respect of ships registered under the Acts specified in S. 3, Proviso (2).

3. **Description of stamp.**—See Appendix C.

4. **Duty payable (C. P. & Bihar.)**—The duty payable is the same as a bond for the same amount. Where the duty on a bond has been enhanced by a subsequent amendment, the amendment will also affect the duty payable under this article. (See Schedules (General), Note B.)

17. **CANCELLATION.**—Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for. Five rupees.

*See also Release (No. 55), Revocation of Settlement (No. 58-B), Surrender of Lease (No. 61), Revocation of Trust (No. 64 -B).*

#### Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 17.

**BIHAR** See Bihar Sch. IA, Art. 17.

**BOMBAY** See the Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See Central Provinces Sch. 1A, Art. 17.

**MADRAS** See Madras Sch. IA, Art. 15.

**ORISSA** See Orissa Sch. IA, Art. 17.

**PUNJAB** See Punjab Sch. IA, Art. 17.

**UNITED PROVINCES** See United Provinces Sch. IA, Art. 17.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 17.

#### Reductions and Remissions.

For reductions and remissions under this article see Appendix D

1. **Scope of the article.**—The article is new. This article is a residuary provision. The other articles providing for instruments of cancellation are Art. 55 (Release), Art. 58-B (Revocation of settlement), Art. 61. (Surrender of lease) and Art. 64-B (Revocation of trust). If the instrument in question comes under any of those provisions, this article will not apply. Nor does it apply if the instrument is not attested.

4. ('99) 22 Mad 26 (29) : 8 Mad L Jour 159 (DB), *A. K. Sahib Mercoyar v. R. Chetti.*

158 : 93 R R 599 : 22 L J Ex 341 : 1 W R (Eng) 505, *Stain Bank v. Shepard.*

5. (1853) 138 E R 1262 (1272) : 22 L T (OS)



Where immovable property is sold to another by a registered deed, the title cannot be re-transferred to the original vendor except by a registered instrument and this instrument would be a "conveyance" and not a mere "cancellation" however it may be worded or described by the parties.<sup>1</sup>

A who owes to B Rs. 2,000, sells to B his immovable property for Rs. 3,000. This sum is made up by the payment of Rs. 1,000 in cash and the cancellation of A's liability for Rs. 2,000. Such cancellation is expressed in the sale-deed. Duty must be paid on the sale-deed in respect of the whole amount of Rs. 3,000. The payment of Rs. 5 as for cancellation under this article will not reduce the value of the *sale-deed* for purposes of stamp to Rs. 1,000. In such a case, the instrument will include both a cancellation and a conveyance and the provisions of Ss. 5 and 6 will apply.<sup>2</sup>

2. **Cancellation of will.**—A will is an instrument as defined in S. 2 (14) although it is not liable to stamp duty. Hence, an instrument cancelling a will would be covered by and chargeable under this article if such instrument is attested. The duty chargeable has, however, been remitted. (See Reductions and Remissions by the Central Government, Item No. 112 in Appendix D.)

3. **Description of stamp.**—See Appendix C.

\*18. **CERTIFICATE OF SALE** (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer—

- (a) where the purchase-money does not exceed Rs. 10;
- (b) where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25 ;
- (c) in any other case. . . . .

Two annas.

Four annas.

The same duty is a Conveyance (No. 23) for a consideration equal to the amount of the purchase money only.

#### Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 18.

**BIHAR** See Bihar Sch. IA, Art. 18.

#### BOMBAY

(i) In column 2 of clauses (a) and (b) of Art. 18 *substitute* the words 'four annas' and "eight annas" for the words "two annas" and "four annas" respectively. In column 2 of clause (c) the entry is the same as that of the Central Act.

—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (b).* [1-4-1932.]

(ii) For the rate of stamp duty payable under clause (c) of Art. 18 in the cities of Bombay, Ahmedabad, Poona and such other cities and urban areas, as the Provincial Government may, by notification in the Official Gazette, specify in this behalf and to which Part V of Bombay Act II of 1932 has been extended under S. 16 of that Act see Part V of Bombay Act II of 1932 reproduced in Appendix A.

(iii) See also Note given under Art. 1, Provincial Amendments (Bombay).

\* [1879—Art. 16.]

#### Article 17—NOTE 1

1. ('10) 32 All 171 (175): 5 Ind Cas 697 (DB), *Emperor v. Rameshardas*.

2. ('10) 32 All 171 (175): 5 Ind Cas 697 (DB), *Emperor v. Rameshardas*.



CENTRAL PROVINCES See Central Provinces Sch. IA, Art.18.

MADRAS See Madras Sch. IA, Art. 16.

ORISSA See Orissa Sch. IA, Art. 18.

PUNJAB See Punjab Sch. IA, Art. 18.

SIND

(i) Same as that of Bombay (i).—*Sind Act I of 1938.* (31-3-1938.)

(ii) For the rate of stamp duty payable under clause (c) of Art. 18 in the city of Karachi and towns of Hyderabad, Sukkur, Mirpurkhas, Larkana and Nawabshah see Part V of Bombay Act II of 1932 as amended by Sind Act II of 1943 read with Sind Act V of 1949 reproduced in Appendix A.

(iii) See also Note given under Art. 1, Provincial Amendments (Sind).

UNITED PROVINCES See United Provinces Sch. IA, Art.18.

WEST PUNJAB See West Punjab Sch. IA, Art. 18.

### Reductions and Remissions.

For reductions and remissions under this article see Appendix D.

### SYNOPSIS

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Certificate of sale.</li> <li>2. Property sold in separate lots.</li> <li>3. Purchase-money only.</li> <li>4. Grant of fresh certificate.</li> </ol> | <ol style="list-style-type: none"> <li>5. Stamp for sale certificate inadvertently spoiled by Court-officer—Allowance for stamp.</li> <li>6. Description of stamp. See Appendix C.</li> </ol> |
|--|---|

1. **Certificate of sale.**—This article prescribes a stamp duty for a certificate of sale. Under the Act of 1869, there was no provision corresponding to this article. A certificate of sale issued by a Revenue Court or officer was, therefore, held not liable to duty. The sale certificate issued by a civil Court under S. 259 of the Code of Civil Procedure, 1859, however, was liable to be stamped as a "conveyance" by virtue of the express provision in that section to that effect.<sup>1</sup>

Under Art. 16 of the Act of 1879, duty was for the first time imposed on a certificate of sale, whether issued by the civil Court or Revenue Court or Revenue-authority.

Under the present Act also this article applies to *all* certificates of sale.

The term "instrument of sale" used in S. 135 of the Madras City Municipal Act, 1919, includes a "certificate of sale."<sup>2</sup> A certificate issued under S. 15 of the Bengal Patni Taluqs Regulation, VIII of 1819, however, is not a "certificate of sale" within the meaning of the article;<sup>3</sup> so also, a certificate granted under S. 14 of the Bengal Revenue Sales Act, XI of 1859, is not a certificate of sale chargeable under this article.<sup>4</sup>

Certificates executed by Local Fund servants, under Rule 11 of the Provident Fund Rules, are exempt from stamp duty.<sup>5</sup>

Having regard to S. 29 (f), it is the duty of the *purchaser* to bear the expense of the proper stamp of a sale certificate.

#### Article 18—NOTE 1

1. ('75) 8 Mad H C R 112 (113), *Case referred by the Board of Revenue.*

Also see S. 2 (10) Note 17.

2. ('33) Mad S M page 89. (Citing B P 347, Mis., 13th November, 1926 : 139-R., Mis., 19th May 1930. A surcharge duty of 1½ per cent is leviable under G. O. No. 4081 L & M., dated 21st September 1926, in respect of these instruments also.)

3. ('31) Beng S M Vol. I, page 67, (Nor does it require to be stamped as a receipt, inas-

much as it is exempted from liability to stamp duty by Proviso (1) to Section 3 of that Act.)

('40) Bihar S M page 152. (Do.)

4. ('31) Beng S M Vol. I, page 67. (Certificate is chargeable as a "conveyance" under Art. 23.)

('40) Bihar S M page 153. (Citing Legal Remembrancer's opinion, dated the 24th February 1906—Do.)

5. ('33) Mad S M page 89. (Citing, B P 217, 20th April 1892.)



A sale certificate cannot be refused on the ground that the stamp papers produced are not in the name of the person producing them.<sup>6</sup>

**2. Property sold in separate lots.**—Article 16 of the Act of 1879, corresponding to this article, did not contain the words “in respect of each property put up as a separate lot and sold.” It was held in the undermentioned Bombay cases<sup>1</sup> that where the lots of land sold to the same purchaser were contiguous, they might be comprised in one certificate of sale. After the introduction of these words in the Act of 1899, the Bombay view is no longer good law.

**3. Purchase-money only.**—Where property subject to an encumbrance was sold by auction in execution of a decree, there was a conflict of decisions, under the Act of 1879, as to whether the certificate of sale should be stamped according to the amount of purchase-money only or according to the purchase-money together with the encumbrance. The High Court of Bombay<sup>1</sup> held that where a certificate of sale had expressly stated that the sale was made subject to the mortgage or charge right of the third party, the principal sum due upon the mortgage or charge was to be deemed to be a part of the consideration for the transfer under S. 24 and as such, the stamp duty was to be calculated on the purchase-money as well as the encumbrance. The High Courts of Madras,<sup>2</sup> Calcutta<sup>3</sup> and Allahabad<sup>4</sup> took a contrary view. They held that when property was sold under a decree of Court subject to mortgage or other encumbrance, it was not sold subject to the “payment of the mortgage-debt” within the meaning of S. 24. According to this view that section only applied where it was part of the consideration for the transfer that the encumbrance should be paid off.

This conflict was set at rest by Act VI of 1894, S. 5, by which the following proviso was added to S. 24, namely, “nothing in this section shall apply to any such certificate of sale as is mentioned in Art. 16” (i.e. Art. 18 of the Act of 1899). The word “only” was also added at the end of the second column of that article by S. 6 of that Act. These alterations were retained in the Act of 1899.

It is quite plain now that such encumbrances are not to be considered in calculating the stamp duty on the certificate of sale. (See also Note 7 on S. 24.)

**4. Grant of fresh certificate.**—A Court having once granted a certificate of sale to an auction-purchaser is under no obligation to issue a new certificate on

6. ('33) Mad S. page 89. (Citing B P 1336, Mis., 30th September, 1909.)

Article 18—NOTE 2

1. ('83) 1883 Bom P J 277, *In re Vithal Govind*

('83) 1883 Bom P J 333 (FB), *Narsidas v. Jivla*.

Also see S. 5 Note 10.

Article 18—NOTE 3

1. ('81) 5 Bom 470 (477) (FB), *Sha Nagindas Jeychand v. Halalkore Nathwa Gheesla*.

('84) 1884 Bom P J 98 (DB), *Pandurang v. Balaji*.

('86) 10 Bom 58 (59) (FB), *In re Vishnu Keshav Sathe*.

('91) 15 Bom 532 (535) (FB), *Meer Kaisur Khan v. Ebrahim Khan*.

('94) 18 Bom 175 (177) (FB), *Shantappa Chedambaraya v. Subrao Ramchandra Vellapur*.

('84) 1884 Bom P J 261, *Gulam Mahomed v. Magan*.

('83) 1883 Bom P J 333, *Narsidas v. Jivla*. (Assumed.)

('85) 9 Bom 47 (49) : 1884 Bom P J 260 (FB), *In re Ramkrishna*.

2. ('82) 5 Mad 18 (20) (SB), *Reference under Stamp Act, S. 49*.

('84) 7 Mad 421 (422) (SB), *Reference under Stamp Act, S. 46*.

3. ('84) 10 Cal 92 (96) : 13 Cal L Rep 164 (SB), *Reference to Board of Revenue*.

4. ('92) 15 All 107 (108) : 1892 All W N 243 *Jwala Prasad v. Ram Narain*.



a proper stamp, in order that he may escape the penalty which he has incurred by reason of the certificate being insufficiently stamped.<sup>1</sup> In the undermentioned case<sup>2</sup> it has been suggested that a second certificate on a proper stamp may be given to the purchaser without prejudice to any question as to any penalty on the first certificate.

The purchaser himself may apply under S. 41 to the Collector asking for the mistake to be rectified.<sup>3</sup>

**5. Stamp for sale certificate inadvertently spoiled by Court-officer—Allowance for stamps.**—The purchaser at a court sale presented a stamped paper for the engrossment of the sale certificate. The stamp was inadvertently punched by some officer of the Court, but the paper was used as intended, and delivered to the purchaser. Subsequently, a Deputy Collector, treating the certificate as unstamped, levied the stamp duty together with a penalty. It was held that the document was duly stamped and that the amount levied should be refunded. The reason for making an allowance for a spoiled stamp under s. 49 is that the stamp has become unfit for use, but in this case the stamp was not rendered unfit for use by punching, for the Court itself engrossed upon the paper the deed upon which the stamp paper was presented.<sup>1</sup>

**6. Description of stamp.**—See Appendix C.

**\*19. CERTIFICATE OR OTHER DOCUMENT** evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrip or stock in or of any such company or body. <sup>a</sup> [Two annas.]

See also Letter Allotment of Shares (No. 36).

a. Substituted for the words "one anna" by Section 2 of the Indian Stamp (Amendment) Act, 1923 (XLI of 1923).

#### Provincial Amendments.

**BIHAR** The stamp duty leviable under this article is increased by a surcharge by S. 5 of Bihar Act XXV of 1948 [1-4-1948.] For the text of this Act see Appendix H.

**BOMBAY** See the Note given under Art. 1, Provincial Amendments (Bombay).

**MADRAS** See Madras Sch. IA, Art. 16A.

**ORISSA** The stamp duty leviable under this article is increased by a surcharge by S. 2 of Orissa Act II of 1945 [1-7-1945]. For the text of this Act see Appendix H.

**UNITED PROVINCES** See United Provinces Sch. IA, Art. 19.

**WEST PUNJAB** See West Punjab Sch. I-A, Art. 19.

\* [1879—Art. 17 ; 1869—Sch. II, Art. 4 ; 1862—Sch. A, Art. 20.]

#### Article 18—NOTE 4

1. ('85) 9 Bom 526 (527) *Nandran Motiran v. Kacha Bhau*.

Also see S. 35 Note 18.

2. ('30) 17 AIR 1930 Bom 392 (394) : 128 Ind Cas 31 (FB), *Collector, Ahmednagar v. Rambhau*.

3. ('30) 17 AIR 1930 Bom 392 (394) : 128 Ind Cas 31 (FB), *Collector, Ahmednagar v. Rambhau*.

Also see S. 41 Note 2.

#### Article 18—NOTE 5

1. ('95) 18 Mad 235 (236) (SB), *Reference under Stamp Act, S. 46*.



## Reductions and Remissions.

For reductions and remissions under this article see Appendix D.

1. **Certificate of shares or stock.**—Section 29 of the Indian Companies Act, 1913, provides as follows :

“A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified.”

This article prescribes the duty payable on such a certificate.

2. **Scrip-certificate.**—Where debentures or debenture stock are allotted upon the terms that the same shall be paid by instalments, it is usual to issue provisional bearer scrip-certificates to the subscribers, to be exchanged for definitive debentures or for stock-certificates when all the instalments are paid and to indorse upon the scrip-certificates the payments of the several instalments. The bearer of the certificate, when the instalments are paid, is entitled to have the debentures or stock certificate issued to him.<sup>1</sup>

“Scrip” has been defined as follows in Wharton’s *Law Lexicon* :

“Scrip—a certificate or schedule ; also evidence of the right to obtain shares or debentures in a limited company, sometimes called ‘scrip-certificate,’ generally part-paid and exchangeable for the certificate of share or the debenture upon payment in full.”

The scrip of a foreign Government issued by it or negotiating a loan is a negotiable instrument and passes by mere delivery to a *bona fide* holder for value.<sup>2</sup> It was held that a scrip in a railway company was not goods, wares or merchandise within the exemption in the Stamp Act, 55 Geo. III, C. 184.<sup>3</sup>

3. **Stocks and shares—Distinction.**—When the subscribed capital of a company has been fully paid up, it may be converted into ‘stock’ by a special resolution of the company. Stock is not divided into *equal shares* or parts and the divisions are not numbered but it may be divided into *amounts*. Thus, a man holds Rs. 10,000 worth of stock in a company where previously he held 100 shares of Rs. 100 each.<sup>1</sup>

4. **Description of stamp.**—See Appendix. C.

<p>*20. <b>CHARTER-PARTY</b>, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer, whether it includes a penalty clause or not.</p>	<p>One rupee.</p>
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\* [1879—Art. 18 ; 1869—Sch. II ; Art. 22 ; 1862—Sch. A, Arts. 21, 6 ; 1860—Sch. A, Art. 16 ;

### Article 19—NOTE 2

1. Halsbury’s *Laws of England* Vol. V, p. 354.
2. (1876) 1 App Cas 476 (490, 493, 497) : 45 L J Q B 748: 35 L T 179: 24 W R (Eng) 987, *Goodwin v. Roberts*.

3. (1846) 153 E R 1101 (1102, 1103) : 16 L J Ex 18: 8 L T (OS) 121, *Knight v. Barber*.

### Article 19—NOTE 3

1. See (1874) 10 Ch 148 (154), *Morrice v. Aylmer*.



## Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 20.**BIHAR** See Bihar Sch. IA, Art. 20.**BOMBAY**(i) In column 2 of Art. 20 *substitute* the words "two rupees" for the words "one rupee."—*Bombay Act II of 1932, Pt. VI S. 15 (5) (b)*. [1-4-1932.]

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See Central Provinces Sch. IA, Art. 20.**MADRAS** See Madras Sch. IA, Art. 17.**ORISSA** See Orissa Sch. IA, Art. 20.**PUNJAB** See Punjab Sch. IA, Art. 20.**SIND**(i) Same as that of Bombay (i).—*Sind Act I of 1938*. [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments (Sind.)

**UNITED PROVINCES** See United Provinces Sch. IA, Art. 20.**WEST PUNJAB** See West Punjab Sch. IA, Art. 20.1. **Description of stamp.**—See Appendix C.2. **Charter-party.**—Charter-party is an agreement in writing by which a ship-owner agrees to let an entire ship, or part thereof, to a merchant, for the carriage of goods on a specified voyage, or during a specified period, for a sum of money which the merchant agrees to pay as freight for their carriage.<sup>1</sup>

A charter-party is to be distinguished from a bill of lading which is a contract in respect of particular goods.

The words "whether it includes a penalty clause or not" were newly introduced in this article.

A guarantee for the due performance of a charter-party does not require to be stamped under this article, and an agreement stamp under Art. 5 will be sufficient.<sup>2</sup>

## Provincial Amendments.

## Articles 20A, 20B and 20C.

**BOMBAY**(i) *Insert* the following entries after Art. 20, namely—

<p>"20A. Clearance list relating to the transactions for the purchase or sale of a Government security or a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of an incorporate Company or other body corporate submitted to the clearing house of a stock exchange.</p>	<p>The sum of duties payable at the rates specified under Art. 5 or 43, as the case may be, in respect of each of the entries in such list on the value of the securities calculated at the making up price or the contract price, as the case may be.</p>
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—*Bombay Act VIII of 1947, S. 3 (2)* [31-3-1947.]a. Explanation is *deleted* by Bombay Act II of 1949, S. 7 [1-4-1949.]

## Article 20—NOTE 2

1. Wharton's *Law Lexicon*, 14th Edition,

p. 183.  
 2. (1867) 2 Q B 144 (149) : 36 L J Q B 81 : 15 W R (Eng) 345, *Rein v. Lane*.



"20B. Clearance list relating to the transaction for the purchase or sale of cotton submitted to the clearing house of a Cotton Association.

The sum of duties payable under Art. 5 or 43, as the case may be, in respect of each of the entries in such list on the units of transactions or parts thereof."

a[\*

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—*Bombay Act XXIII of 1948, S. 12 (2) [31-3-1948.]*

a. Explanation is deleted by *Bombay Act II of 1949, S. 7 [1-4-1949.]*

"20C. Clearance list relating to the transaction for the purchase or sale of bullion or specie submitted to the clearing house of a Bullion Association.

The sum of duties payable under Art. 5 or 43, as the case may be, in respect of each of the entries in such list on the units of transactions or parts thereof."

—*Bombay Act II of 1949, S. 7 (2). [1-4-1949.]*

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

\*21. [Omitted by Section of the Indian Finance Act, 1927 (V of 1927).]

Note—The omitted Article 21 ran as follows:—

"21. CHEQUE [as defined by section 2 (7)]—One anna."

1. Cheques.—Article 21 which prescribed a duty of one anna on cheques was repealed by the Finances Act, V of 1927, with effect from 1st July 1927. No duty is, therefore, payable on cheques from that date.

Under this article a cheque was liable to duty irrespective of the amount thereof. Similar was the position under the Act of 1860 also. But under the intermediate Acts a cheque exceeding Rs. 20 in value only was required to be stamped.

See the undermentioned cases<sup>1</sup> decided under this article.

†22. COMPOSITION-DEED, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business under the supervision of inspectors or under letters of licence for the benefit of his creditors.

Ten rupees.

#### Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 22.

**BIHAR** See Bihar Sch. IA, Art. 22.

**BOMBAY**

(i) In column 2 of Art. 22 substitute the words "twenty rupees" for the words "ten rupees."—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (b). [1-4-1932.]*

\* [1879—Art. 19 ; 1869—Sch. II, Art. 1 ; 1862—Sch. A, Art. 10.]

†[1879—Art. 20 ; 1869—Sch. II, Art. 28 ; 1862—Sch. A, Art. 22 ; 1860—Sch. A, Art. 17.]

#### Article 21—NOTE 1

1. ('94) 1894 Pun Re No. 69 Page 229 (231) (DB), *Damodardas v. Major Doran*. (Two cheques for f35 and f25 respectively drawn in British India and stamped with a penny stamp each were held not to be duly stamped, proper stamp being one-anna stamp.)

('25) 12 AIR 1925 Cal 1007 (1009) : 52 Cal 677 : 90 Ind Cas 59, *Walter Mitchell, v. A. K. Tennent*. (In India a post-dated cheque is admissible in evidence although it bears a stamp representing duty payable in respect of a cheque, and not an *ad valorem* duty payable in respect of a bill of exchange.)



- (ii) See also Note given under Art. 1, Provincial Amendments (Bombay).  
**CENTRAL PROVINCES** See Central Provinces Sch. IA, Art. 22.  
**MADRAS** See Madras Sch. IA, Art. 18.  
**ORISSA** See Orissa Sch. IA, Art. 22.  
**PUNJAB** See Punjab Sch. IA, Art. 22.  
**SIND**

- (i) Same as that of Bombay (i).—*Sind Act I of 1938*. [31-3-1938.]  
 (ii) See also Note given under Art. 91 Provincial Amendment (Sind).  
**UNITED PROVINCES** See United Provinces Sch. IA, Art. 22.  
**WEST PUNJAB** See West Punjab Sch. IA, Art. 22.

**1. Composition-deed.**—The definition given in this article covers three classes of instruments: (1) an assignment for the benefit of the creditors; (2) an arrangement whereby payment of a composition or dividend is secured to the creditors (3) an inspectorship-deed for the purposes of working the debtor's business for the benefit of the creditors.<sup>1</sup> It has, however, been held in the undermentioned case<sup>2</sup> that the essential test of a composition-deed is that there ought to be a *compounding* of debts due and that in the absence of such compounding, a deed merely transferring property to trustees for paying off creditors is not a composition-deed. The decision is inconsistent with the express language of this article.

It is the substance of the transaction and not its form that is to be looked to, to determine whether a deed is a composition-deed falling under the first head or a deed of conveyance.<sup>3</sup>

**2. Inspectorship-deed.**—It is an instrument entered into between an insolvent debtor and his creditors, appointing one or more person or persons to inspect and oversee the winding up of such insolvent's affairs on behalf of the creditors.<sup>1</sup>

**3. Letter of licence.**—It is an instrument in writing whereby the creditors of a man who had failed to meet his engagements give him time for payment of his debts, and undertake that in the meantime he should be free from arrest for debt.<sup>1</sup>  
 See Article 38.

**4. Description of stamp.**—See Appendix C.

**\*23. CONVEYANCE** [as defined by section 2 (10)] not being a Transfer charged or exempted under No. 62, where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50 ;

Eight annas.

\* [1879—Art. 21 ; 1869—Sch. I, Art. 15 ; 1862—Sch. A, Arts. 23, 24, 25 ; 1860—Sch. A, Arts. 7, 19.]

Article 22—NOTE 1

1. ('14) 1 AIR 1914 Bom 55 (57) : 38 Bom 576 : 24 Ind Cas 730 (DB), *Chandrashankar v. Bai Magan*. (The Stamp Act may not be strictly speaking in *pari materia* with the Registration Act but the term "composition deed" should be taken as having the same meaning as that given in the Stamp Act.)
2. ('12) 15 Ind Cas 850 (850) (DB) (Bom). *Shekh Adam v. Chandrashankar*. (The deed in this case was the same as in AIR 1914 Bom 55 : 38 Bom 576.)
3. ('93) 16 Mad 85 (89) : 3 Mad L Jour 30 (DB), *Subbaraya v. Kythalinga*. (A debtor and the firm of which he was a member

were adjudicated insolvents. Subsequently the creditors met and passed resolutions that a composition of 50 per cent in the rupee be accepted in full satisfaction of the debts, that security of plaintiff's firm be accepted for payment of the composition money and for that the property of the insolvents be transferred to the plaintiff. A deed was executed giving effect to these resolutions—*Held* that the deed was a composition debt and not a deed of conveyance.) Also see S. 2 (10) Note 3 and S. 3 Note 12.

Article 22—NOTE 2

1. Wharton's *Law Lexicon*, 14th Edition.
- Article 22—NOTE 3
1. Wharton's *Law Lexicon*, 14th Edition



where it exceeds Rs. 50 but does not exceed Rs. 100				One rupee.
Ditto	100	ditto	200	Two rupees.
Ditto	200	ditto	300	Three rupees.
Ditto	300	ditto	400	Four rupees.
Ditto	400	ditto	500	Five rupees.
Ditto	500	ditto	600	Six rupees.
Ditto	600	ditto	700	Seven rupees.
Ditto	700	ditto	800	Eight rupees.
Ditto	800	ditto	900	Nine rupees.
Ditto	900	ditto	1,000	Ten rupees.
				Five rupees.

and for every Rs. 500 or part thereof in excess of Rs. 1,000.

*Exemption*

Assignment of copyright by entry made under the  
Indian Copyright Act, 1847, section 5.

a. See now the Indian Copyright Act, 1914 (III of 1914).

**Provincial Amendments.**

**BENGAL**

(i) See Bengal Sch. IA, Art. 23.

(ii) For the increment of duty on instruments of sale of immovable property situated within the limits of the Calcutta Municipality, see S. 82 of the Calcutta Improvement Act, 1911 (Bengal Act V of 1911). For the text of this section, see Appendix J.

**BIHAR** See Bihar Sch. IA, Art. 23.

**BOMBAY**

(i) In column 2 of Art. 23 the first three entries are the same as in the Central Act; thereafter *substitute*—

for the words	"Three rupees"	the words	"Four rupees eight annas."
"	"Four rupees"	"	"Six rupees."
"	"Five rupees"	"	"Seven rupees eight annas."
"	"Six rupees"	"	"Nine-rupees."
"	"Seven rupees"	"	"Ten rupees eight annas."
"	"Eight rupees"	"	"Twelve rupees."
"	"Nine rupees"	"	"Thirteen rupees eight annas."
"	"Ten rupees"	"	"Fifteen rupees."
"	"Five rupees"	"	"Seven rupees eight annas."

—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (b).* [1-4-1932.]

(ii) For the rates of stamp duty payable under Art. 23 in the cities of Bombay, Ahmedabad, Poona and such other cities and urban areas, as the Provincial Government may, by notification in the Official Gazette, specify in this behalf and to which Part V of Bombay Act II of 1932, has been extended under S. 16 of that Act, see Part V of Bombay Act II of 1932 reproduced in Appendix A.

(iii) See also Note given under Art. 1, Provincial Amendments (Bombay.)

**CENTRAL PROVINCES**

(i) See Central Provinces Sch. IA, Art. 23.



(ii) For the increment of duty on instruments of sale of immovable property situated within the area to which the Nagpur Improvement Trust Act, 1936, extends or situated within the limits of the City of Jabulpore, see S. 77 of the Nagpur Improvement Trust Act, 1936 (C. P. Act XXXVI of 1936 and S. 2 of the City of Jabulpore (Improvement Duty Act, 1948 (C. P. & Berar Act LVIII of 1948. For the text of these sections see Appendix J.

### MADRAS

(i) See Madras Sch. IA, Art. 19.

(ii) For the increment of duty on an instrument of sale of immovable property situated within the limits of the City of Madras or of a municipality, or in the area under the jurisdiction of a local board, see S. 135 of the Madras City Municipal Act, 1919 (Madras Act IV of 1919), S. 116A of the Madras District Municipalities Act, 1920 (Mad. Act V of 1920) and S. 110A of the Madras Local Boards Act, 1920 (Mad. Act XIV of 1920.) For the text of these sections see Appendix J.

**ORISSA** See Orissa Sch. IA, Art. 23.

**PUNJAB** See Punjab Sch. IA, Art. 23.

### SIND

(i) Same as that of Bombay (i).—*Sind Act I of 1938*. [31-3-1938.]

(ii) For the rate of stamp duty payable under Art. 23 in the City of Karachi and the towns of Hyderabad, Sukkur, Mirpurkhas, Larkana and Nawabshah, see Part V of Bombay Act II of 1932 as amended by Sind Act II of 1943 and read with Sind Act V of 1949, reproduced in App. A.

(iii) See also Note given under Art. 1, Provincial Amendments (Sind.)

**UNITED PROVINCES** See U. P. Sch. IA, Art. 23.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 23.

### Reductions and Remissions.

For reductions and remissions under this article see Appendix D.

#### Synopsis

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|--|--|
| 1. Description of stamp. See Appendix C.   | 5. Consideration not set forth in deed—Duty whether payable. |
| 2. Scope and applicability of the article. | 6. Surcharge.  |
| 3. Consideration.                          | 7. Exemption and remission.                                  |
| 4. Stamp duty how calculated.              |  |

1. **Description of stamp.**—See Appendix C.

2. **Scope and applicability of the article.**—This article prescribes the stamp duty payable on a conveyance. The duty charged is *ad valorem* and is to be assessed on the amount or value of the consideration set forth in the conveyance.

This article applies to a conveyance *as defined by S. 2 (10)*. Hence, the article will not apply to transfers which are otherwise specifically provided for by Sch. I, as such transfers are excluded from the definition of "conveyance" in S. 2 (10).<sup>1</sup>

Further, the article itself expressly excepts transfers charged or exempted under Art. 62. Thus the sale of a bond<sup>2</sup> or the transfer of the benefit of a mortgage<sup>3</sup> will fall under cl. (c) of Art. 62 and not under this article.

#### Article 23—NOTE 2

1. ('47) 34 AIR 1947 All 104 (105): ILR (1946) All 705: 231 Ind Cas 366 (DB), *Jwala Bank v. Sheobodh Chandra*. (The document by which a Hindu widow surrenders her life interest in her husband's property in favour of her daughters is not to be stamped either as a gift or a conveyance or transfer. It is sufficient to stamp it is a release)

- ('45) 32 AIR 1945 Lah 69 (72): ILR (1946) Lah 185 (SB), *Miran Baksh v. Emperor*. (Article 23 cannot apply unless Arts. 6 and 40 are ruled out.)  
2. ('34) 21 AIR 1934 Oudh 344 (344): 151 Ind Cas 532 (DB), *Jang Bahadur v. Bhaggoo*. Also see Art. 62 Note 6.  
3. ('37) I L R (1937) 2 Cal 486 (490) (DB), *In the matter of Kamala Banjan Ray*.



Where, however, the document amounts to a conveyance as defined in S. 2 (10) and is not covered by Art. 62, it is chargeable under this article. Thus, where the liquidator of a company transferred the assets of the company to another company which had paid off the debts of the former, and it was sought to apply Art. 62 (e) to the document as being a transfer of trust property without consideration from a trustee to a beneficiary it was held that the document was not of such a description and that this article (Article 23) applied.<sup>4</sup>

A schedule appended to a deed of sale does not require to be stamped under this article or under any other article.<sup>5</sup> See S. 4 Note 7. Also see generally Notes on S. 2 (10).

**3. Consideration.**—The stamp duty, under this article, being payable on the amount or value of the *consideration* for a conveyance, it becomes necessary to determine what the consideration for a particular conveyance is. Sections 24, 25 and 28 lay down special rules for determining the consideration in certain cases. A reference may, therefore, be made to those sections and Notes thereon.

In the undermentioned case<sup>1</sup> a company conveyed its business premises to a railway company under statutory compulsion. The jury in a compensation trial awarded to the transferor company certain amount as the value of the premises and the buildings thereon and also allowed an amount as compensation for loss of business. It was held that the amount allowed as compensation for loss of business was a part of the consideration and the duty was therefore payable thereon.

**4. Stamp duty how calculated.**—The stamp duty is to be calculated on the consideration as *set forth in the conveyance*, whatever may be the intrinsic value of the property conveyed.<sup>1</sup> Thus, where the consideration for a sale-deed is stated to be Rs. 3000 but the actual value of the property sold is found to be Rs. 10,000, the duty is leviable on Rs. 3000 and not on Rs. 10,000.<sup>2</sup>

4. ('40) Bihar S M page 155. (The Tata Iron and Steel Company, Limited, having paid off the loan of debenture stock raised by the Indian Collieries Syndicate, Limited, as also whole of the cumulative preference shares issued by that body, purchased for cash the whole of the ordinary share capital of the Syndicate and had these transferred to itself. The Syndicate then having only one shareholder went into voluntary liquidation, and the Tata Company asked the liquidators to cause the property and assets of the Syndicate to be transferred to the company. A deed was accordingly drawn up evidencing such transfer and characterising it as a transfer of trust property, without consideration, from a trustee to a beneficiary. The document was stamped with a stamp of Rs. 10. Rs. 5 being for a transfer under Art. 62 (e) of Sch. I of Act II of 1899 and the balance for a release under Art. 55 (b). On a reference to the High Court (Calcutta) under S. 57 (1), it was held that Art. 62 (e) did not apply to this was not a case of transfer of trust property, without consideration, from a trustee to a beneficiary, the transferee company not being a beneficiary in whom ownership had already vested (for the assets of the Syndicate until dissolution continued to belong to the Syndicate), nor could the liquidator be held to be a trustee,

nor the transfer, a transfer without consideration. The document was accordingly found to attract duty under Art. 23, Sch. I, Act II of 1899, on the whole sum paid by the Tata Company on account of the debenture loan and both preference shares and ordinary shares. The duty of Rs. 5 for release under Art. 55 (b) was not payable, such release being merely ancillary to the main purpose of the deed.)

(31) Beng S M Vol. I, page 69. (Do.)  
5. ('71) 6 Mad H C R (App) 36 (36), H C Proceedings 3rd, November 1871.

#### Article 23—NOTE 3

1. ('87) 12 App Cas 315 (322), *Commissioners of Inland Revenue v. Glasgow and S. W. Ry. Co.*

#### Article 23—NOTE 4

1. ('97) 20 Mad 27 (29) (SB), *Reference under Stamp Act, S. 46.*  
[See also ('33) Mad S M p. 92. (Citing B P 192, 19th May 1897. Promissory note executed by A in favour of B and C—C transferring his interest in promissory note to B for certain amount—Held that amount of consideration for sale should be taken into account for calculating duty.)]
2. ('97) 20 Mad 27 (29), (SB) *Reference under Stamp Act, S. 46.*



In determining what is the consideration as "set forth in the deed," it is only the terms of the document that can be considered and not extraneous circumstances.<sup>3</sup> But the words "as set forth therein" do not mean that the Revenue-authorities must have regard only to what the parties to the instrument have elected to state the consideration to be; but that the duty must be assessed upon the amount or value of the consideration for the transfer as disclosed upon an examination of the terms of the instrument as a whole.<sup>4</sup> Thus, where a transferor is indebted to the transferee and the consideration in the conveyance is stated to be that debt less the amount waived by the transferee, the stamp duty is to be paid not on the consideration stated in the conveyance but on the whole debt.<sup>5</sup>

Where two or more properties are sold for a single consideration, the duty is chargeable on the consideration as a whole and not by splitting up the consideration in proportion to the several items of the property.<sup>6</sup> Section 5 does not apply to such a case as the expression "distinct matters" in that section does not mean distinct items of property. In such a case, even if the details of the consideration are set forth by specifying the price of each item of property, the position would not be altered.<sup>7</sup> Thus, where an instrument purports to convey two or more properties for a sum of money composed of items described in the instrument as the values of those properties, the duty is to be calculated upon the aggregate sum specified and not upon the various items composing that sum.<sup>8</sup> (See also S. 5, Note 10.)

Where by one and the same deed a conveyance of freehold lands and good-will and a transfer of interests secured by leases were effected when the Act of 1879 was in force, it was held that the duty on the conveyance of freehold lands and good-will should be calculated under Art. 21 (present Art. 23) and the duty of Rs. 5 on the transfer of each of the interests secured by the leases should be paid under Art. 60 (present Art. 62).<sup>9</sup>

A certificate granted for the sale of a share of a revenue-paying estate under S. 14 of the Bengal Land-revenue Sales Act, XI of 1859, on payment of the arrears of revenue due therefrom, being chargeable as a conveyance, the duty is to be calculated on the amount of the arrears paid which is the value of the consideration.<sup>10</sup>

See also the undermentioned cases.<sup>11</sup>

3.† ('35) 22 AIR 1935 Rang 243 (244): 13 Rang 613: 157 Ind Cas 538 (SB), *In re C. R. M. M. L. A. Chettyar Firm*.

('89) 16 Cal 432 (435) (DB), *Ramen Chetty v. Mahomed Ghouse*.

('25) 12 AIR 1925 Bom 527 (528): 90 Ind Cas 685 (DB), *Ram Prasad v. Shrinivas*.

('03) 27 Bom 279 (280): 5 Bom LR 28 (FB), *Sakharam Shankar v. Ramchandra Babu*. [See however, ('03) 27 Bom 150 (153): 4 Bom LR 951 (FB), *Nandubai v. Gan*.

(Transfer to creditor in lieu of debt—Amount of consideration not specified in deed—Amount of debt due is consideration and stamp duty must be paid on such amount. NOTE.—It is conceived that the Court can ascertain amount of debt by external evidence.)]

4. ('35) 22 AIR 1935 Rang 243 (244): 13 Rang 613: 157 Ind Cas 538 (SB), *In re C. R. M. M. L. A. Chettyar Firm*.

Also see S. 27 Note 2.

5. ('35) 22 AIR 1935 Rang 243 (244): 13 Rang 613: 157 Ind Cas 538 (SB), *In re C. R. M. M. L. A. Chettyar Firm*.

Also see S. 24 Note 3.

6. ('33) 20 AIR 1933 All 321 (323): 55 All 468: 143 Ind Cas 486 (FB), *Ram Swarup v. Joti*. (Sale of several bonds to same purchaser by same deed.)

('31) Beng SM Vol. I p. 18. (A person conveyed his tenant-right in 20 bighas of land to three persons, who purchased in three equal shares—Held, that the conveyance was a single transaction and that there were not three distinct matters within the meaning of S. 5.)

7. ('33) 20 AIR 1933 All 321 (323): 55 All 468: 143 Ind Cas 486 (FB), *Ram Swarup v. Joti*.

8. ('73) 10 Bom HCR 354 (355) (FB), *In re Tukaram Hari Atre*.

9. ('96) 23 Cal 283 (288) (SB), *Reference under Stamp Act 1879, S. 46*. (Under the present Act the duty on a transfer of lease is chargeable as on conveyance—See Art. 63—The case is therefore no longer good law.)

10. ('31) Beng SM Vol. I page 67. (Citing Legal Remembrancer's opinion, dated 24th February 1906.)



5. **Consideration not set forth in deed—Duty whether payable.**—Where the amount or value of the consideration is not set forth in the instrument, this article will not apply.<sup>1</sup>

Section 27 enacts that the consideration must be set forth fully and truly in an instrument of conveyance. If in contravention of the provisions of that section the executant omits to state the consideration with intent to defraud the Government, a prosecution would lie against him under S. 64.<sup>2</sup> The Collector has no power, in such a case, to ascertain the value of the property with a view to causing the instrument to be stamped. It would appear, therefore, that the instrument will not be required to be stamped at all and will have to be admitted in evidence as it is.<sup>3</sup>

But it is conceived that where property is transferred to any person in consideration of a debt due to him (see S. 24) the amount of the debt will be the value of the deed for purposes of stamp even though such amount is not specified in the deed, and that the Court can ascertain such amount by external evidence.<sup>4</sup>

See also the undermentioned cases<sup>5</sup> decided with reference to the earlier Acts.

6. **Surcharge.**—The duty payable on an instrument of sale of immovable property situated within the limits of the Calcutta Municipality has been increased by 2 per cent. by S. 82 of the Calcutta Improvement Act of 1911. (For text of S. 82 see Appendix J.) Where by a deed of relinquishment the executant sold for Rs. 648 a right to a certain annuity and for Rs. 1420 a right to live in certain premises in Calcutta, it was ruled by the Board of Revenue, that the additional duty under that section was payable only in respect of Rs. 1420 and not in respect of Rs. 648, the transfer of the right of allowance being merely a transfer of movable property.<sup>1</sup>

Similar increments in duty payable in respect of instruments of conveyance of immovable property have been made by various Provincials Act given below :

- (1) Madras City Municipal Act, 1919 (Madras Act 4 of 1919) S. 135.
- (2) Madras District Municipalities Act, 1920 (Madras Act 5. of 1920), S. 116A.
- (3) Madras Local Boards Act, 1920 (Madras Act 14 of 1920) S. 110A.

11. ('88) 11 Mad 40 (41) (SB), *Reference Under stamp Act S. 46.* (where a conveyance for Rs. 100 was written on the face of a one rupee stamped paper and a release on the back of the paper, the first instrument should be considered to have been written, executed and stamped according to law. The second instrument can be validated on payment of the deficient stamp duty and the penalty under S. 39 of the Stamp Act.) ('89) 1889 Bom P J 261 (FB)—*Venkatraman v. Bira.* (A sale-deed the consideration for which was Rs. 58 held to be chargeable with one rupee stamp and penalty Rs. 10.)  
Article 23—NOTE 5

1. ('03) 27 Bom 150 (153) : 4 Bom L R 951 (FB), *Nandubai v. Gau.*
2. ('22) 9 AIR 1922 All 82 (83) : 44 All 339 : 65 Ind Cas 811 (FB), *In the matter of Muhammad Musaffar Ali.* (Case relating to gift (Art. 33).)
3. See ('22) 9 AIR 1922 All 82 (83) : 44 All 339 : 65 Ind Cas 811 (FB), *In the matter of Muhammad Muzaffar Ali.* (Case of gift.)

Also see S. 27 Note 2 ; S. 40 Note 2 ; S. 64 Note 5 and Art. 33 Note 5.

4. See ('03) 27 Bom 150 (153) : 4 Bom L R 951 (FB), *Nandubai v. Gau.*

5. ('93) 16 Mad 419 (421) (SB), *Reference under Stamp Act, S. 49.* (Section 4 of Regulation 11 of 1825 providing that instruments not exceeding Rs. 64 in value shall not require stamp—Consideration not stated in instrument—Value of interest transferred cannot be said to have exceeded Rs. 64—Instrument therefore, not liable to stamp duty.)

('81) 1881 Pun Re No. 44 page 114 (115) (FB), *Scott v. Banna.* (Held, that as no value appeared upon the face of the conveyance it fell under the second clause of Article 25 of the Schedule A of the Act of 1862 and was liable to a stamp duty of fifty rupees.)  
Article 23—NOTE 6

1. ('31) Beng S M Vol I page 42. (Citing Board's Resolution No. 3530 St., dated the 15th March 1928, bearing serial No. 5 of file No. 332 of 1927.)



(4) Nagpur Improvement Trust Act, 1936 (C. P. Act 36 of 1936). S. 77.

(5) City of Jubbulpore (Improvement Duty) Act, (C. P. & Berar Act 58 of 1947 S. 2.

For text of these sections, see Appendix J.

7. **Exemption and remission.**—An assignment of copyright by entry made under S. 5 of the Indian Copyright Act of 1847 was exempted from duty payable under this article. That Act was repealed by the Indian Copyright Act of 1914 in which there is no reference to the mode of assignment by entry. The exemption contained in this article should, therefore, be deemed to be obsolete.

For reductions and remissions of duties under this article, see Appendix D.

**CO-PARTNERSHIP-DEED.** See Partnership (No. 46).

\*24. **COPY OR EXTRACT** certified to be a true copy or extract by or order of any public officer and not chargeable under the law for the time being in force relating to court-fees—

- |  |              |
|--|--------------|
| (i) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee ; | Eight annas. |
| (ii) in any other case . . . . .   | One rupee.   |

*Exemption.*

(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.

<sup>a</sup>[(b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, <sup>b</sup>[divorces], deaths or burials].

a. This clause was *substituted* for clauses (b) and (c) by S. 7 (1) of the Indian Stamp (Amendment) Act, 1906 (V of 1906.)

b. *Inserted* by S. 2 and Sch. I of the Repealing and Amending Act, 1914 (X of 1914).

**Provincial Amendments.**

**BENGAL** See Bengal Sch. IA, Art. 24.

**BIHAR** See Bihar Sch. IA, Art. 24.

**BOMBAY**

(i) In column 2 of Art. 24 *substitute* the words “one rupee” and “two rupees” for the words “eight annas” and “one rupee” respectively.

—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (b) [1-4-1932.]*

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See Central Provinces Sch. IA, Art. 24.

**MADRAS** See Madras Sch. IA, Art. 20.

**ORISSA** See Orissa Sch. IA, Art. 24.

**PUNJAB** See Punjab Sch. IA, Art. 24

\* [1879—Art. 22 ; 1869—Sch. I, Art. 23 ; 1862—Sch. A, Arts. 28 to 32 ; 1860—Sch. A, Arts. 21 to 24.]



**SIND**

(i) Same as that of Bombay (i).—*Sind Act I of 1938*. [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments (Sind).

**UNITED PROVINCES** See United Provinces Sch. IA, Art. 24.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 24.

For reductions and remissions under this article see Appendix D.

*Synopsis*

- |  |  |
|--|--|
| 1. Scope of the article.               | 4. Description of stamp. See Appendix C. |
| 2. Public officer.                     | 5. Exemption (a).                        |
| 3. Uncertified copies for private use. | 6. Exemption (b).                        |
|  | 7. Other statutory exemptions.           |

**1. Scope of the article.**—This article provides for the stamp duty on copies or extracts. There are two conditions for the applicability of this article: first, the copy or extract must be certified to be a true copy or extract by or by the order of a public officer, and second, it must not be chargeable under the law for the time being in force relating to court-fees.

The copies of entries in account books which are furnished to the Court under S. 141A of the Civil Procedure Code, 1882, (i.e., O. 13 R. 5 of the Civil Procedure Code, 1908) are compared with the original by the clerk of Court and on finding them to be correct he makes an endorsement thereon to that effect. These copies, though thus certified to be true copies by a public officer, are not chargeable under this article.<sup>1</sup> The reason is that the article contemplates documents which are certified copies at the time of their production in Court and not copies which are certified afterwards. The same is the case with the copies of or extracts from account books and other similar books which are filed under S. 62 of the Civil Procedure Code, 1882 (i. e. O. 7 R. 17 of the Civil Procedure Code, 1908) along with the plaint. These copies are attested by the Court or its officer *after* they are filed in Court and hence do not come within this article.<sup>2</sup>

A copy of an application to the Municipal Board and of the order of the Board passed thereon, certified by the Secretary of the Board is governed by this article.<sup>3</sup> So also the copies of judgments given under the Madras Estates Land Act, 1908, are liable to stamp duty under this article.<sup>4</sup> The copies granted under S. 57 of the Indian Registration Act, 1908, are required to be certified as true by the Registrar and are covered by this article.<sup>5</sup> Similarly the copies of reasons for refusal to register a document under Ss. 71 and 76 of that Act are also liable to stamp duty under this article.<sup>6</sup>

**Article 24—NOTE 1**

1. ('02) 26 Bom 522 (525, 526) : 4 Bom L R 223 (FB), *Kastur v. Fakira*.
- ('03) 27 Bom 150 (154) : 4 Bom L R 951 (FB), *Nandubai v. Gau*.
- ('87) 11 Bom 526 (527, 528) (FB), *Harichand v. Jivna Subhana*.
2. ('91) 15 Bom 687 (690) (FB), *Krishnaji Sadashiv Ranade v. Dulaba*.
3. ('97) 19 All 293 (295) : 1897 All W N 61 (SB), *Reference under Stamp Act, S. 46*. (Record of the proceedings of a Municipal Board are public documents, and the officer who is authorised to deliver copies of public

documents in the course of his official duties is for such purpose a public officer—The Secretary of a Municipality is an officer who in the ordinary course of his official duty, is authorised to deliver copies of the public documents of which he has the custody as Secretary.)

4. ('33) Mad S M p. 96 (96). (Citing B. P. 2850, 21st November 1882.)
5. ('41) C. P. Registration Manual, para. 436, page 329.
6. ('41) C. P. Registration Manual, para. 437, page 329.



As the article requires that the copy or extract should not be "chargeable under the law for the time being in force relating to court-fees," the copies provided for by Arts. 6, 7, 8 and 9 in Sch. I of the Court-fees Act, 1870, are not liable to stamp duty under this article. A certified copy to be substituted in place of the original document in Court under O. 13 R. 9 of the Civil Procedure Code, 1908, is chargeable with court-fee under Art. 8 of Sch. I of the Court-fees Act, 1870, if the original is chargeable with stamp duty. Such copy, therefore, will not be governed by this article.<sup>7</sup>

Where a certified copy is produced to prove the original which has been destroyed, the stamp on the copy does not indicate the stamp on the original. The original document in such a case must be presumed to have been properly stamped.<sup>8</sup> (See also Notes on Preamble and S. 35.)

**2. Public officer.**—The term 'public officer' is not defined in this Act. Being a fiscal statute imposing the payment of duty on the subject, this Act ought to contain the definitions of all terms which have to be considered in applying the Act and which are not accepted as well recognised terms of universal application.<sup>1</sup> In *Henly v. Lyme Corporation*<sup>2</sup> Best C. J. holds that every one who is appointed to discharge a public duty and receive a compensation in whatever shape, whether from the Crown or otherwise constitutes a 'public officer.' See also the definitions in S. 2 (17) of the Code of Civil Procedure and S. 21 of the Penal Code.

In the case noted below<sup>3</sup> a Special Bench of the Allahabad High Court had to consider whether the Secretary of a Municipal Board acts as a "public officer" within the meaning of this article when he certifies as true a copy of an application to the Board and of the order passed by the Board thereon. The Special Bench considered the provisions interpreting the term "public servant" in the Indian Penal Code, a "public officer" in the Civil Procedure Code, and the term "public document" in the Indian Evidence Act and came to the conclusion that as the record of the proceedings of a Municipal Board was a public document, the Secretary of the Board, as an officer authorised to give copies thereof in the ordinary course of his duty, must be held to be a "public officer."

All the officers of the Local Fund Board<sup>4</sup> and those in the Customs, Income-tax and Salt Departments are public officers and a copy or an extract issued by them is liable to stamp duty under this article, provided it is not chargeable under the law for the time being relating to court-fee.<sup>5</sup>

**3. Uncertified copies for private use.**—A certified copy of the Municipal record is governed by this article and must be properly stamped. There is nothing, however, which prevents the issue by the Secretary of a Municipality of uncertified and

7. ('87) 11 Bom 526 (528) (FB), *Harichand v. Jivna Subhana*. (Entries in account books not in the hand of the debtor are not liable to duty under the Stamp Act and therefore the copies of the entries substituted for the original do not require any court-fee under Art. 8, Sch. I of Court-fees Act, 1870.)

8. ('16) 3 AIR 1916 PC 41 (43): 38 All 494: 43 Ind App 264: 39 Ind Cas 11 (PC), *Ahmad Raza v. Syed Abid Husain*. (Affirming the decision of the Allahabad High Court in 19 Ind Cas 445.)

Also see Preamble Note 35; S. 2 (11) Note 12 and S. 35 Note 13.

Article 24—NOTE 2

1. ('97) 19 All 293 (294): 1897 All WN 61

(SB), *Reference under Stamp Act*, S. 46. (Per Edge, C. J.)

2. (1828) 130 ER 995 (1001): 5 Bing 91 (107).

3. ('97) 19 All 293 (295): 1897 All WN 61 (SB), *Reference under Stamp Act*, S. 46. [See also ('33) Mad SM p. 97 (97). (Certified copies of Municipal records should be stamped.)]

4. ('33) Mad SM p. 97 (97). (Citing B. P. 383, 4th June, 1889.)

5. ('40) Bihar SM p. 156 (156).

('34) Punjab SM part I-B, Ch. 3, para. 71, p. 26. (Citing Government of India, No. 4-F, 6-1, Stamps 25, dated 15th October 1925.)



unstamped copies of the record when required for private use.<sup>1</sup> The reason is that the Stamp Act relates only to the copies which are evidence *per se*. The word "copy" in the Act means an authenticated copy, receivable as evidence in the first instance.<sup>2</sup> An uncertified copy intended only for private use will not, therefore, come within this article.

4. **Description of stamp.**—See Appendix C.

5. **Exemption (a).**—A copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose is exempted from stamp duty by this clause. For instance, S. 38 of the Act requires the person impounding an instrument and admitting it in evidence on payment of penalty to send an authenticated copy thereof to the Collector. Such copy comes within this exemption.

The copies required to be sent under Ss. 65, 66 and 89 of the Indian Registration Act, 1908, are also governed by this clause and are exempt from stamp duty.<sup>1</sup>

6. **Exemption (b).**—The expression "any register relating.....marriage" in this clause includes registers relating to the dissolution of marriages.<sup>1</sup>

7. **Other statutory exemptions.**—The exemptions to this article are not exhaustive. There are certain statutes which exempt copies of certain instruments chargeable under this article from the stamp duty. For instance copies of the awards or agreements under the Land Acquisition Act, 1894, are exempted from stamp duty under S. 51 of that Act.

See also Notes on section 3.

**\*25. COUNTERPART OR DUPLICATE** of any instrument chargeable with duty and in respect of which the proper duty has been paid.—

- (a) if the duty with which the original instrument is chargeable does not exceed one rupee ;  
(b) in any other case .. .. .

The same duty as is payable on the original.  
One rupee.

*Exemption*

Counterpart of any lease granted to a cultivator when such lease is exempted from duty.

\* [1879—Art. 23 ; 1869—Sch. II, Art. 16 ; 1862—Sch. A, Arts. 33, 37 ; 1860—Sch. A, Art. 33.]

Article 24—NOTE 3

1. ('33) Mad S M p. 97 (97). (Citing B. P. 111, 5th April 1898.)

[See however ('69) 4 Mad H C R (App) 57 (59), *H. C. Proceedings*, 26th July 1869. (Neither Sch. B of Act X of 1862 nor Sch. B of Act XXVI of 1867 recognise any distinction between authenticated and unauthenticated copies, and the usage of granting unauthenticated copies on plain

paper is consequently not warranted by law.)  
2. (1842) 152 E R 565 (567) : 12 L J Ex 38 : 62 R R 678, *Braythwaite v. Hitchcock*.

Article 24—NOTE 5

1. ('41) C. P. Registration Manual para. 438, p. 329. (Copies sent under Ss. 65 and 66 Indian Registration Act, 1908.)

Article 24—NOTE 6

1. ('33) Mad S M p. 96 (96). (Citing B. P. 96/1046-R., Mis., 23rd May 1907.)



### Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 25.

**BIHAR** See Bihar Sch. IA, Art. 25.

#### BOMBAY

(i) In clause (a) in column 1 of Art. 25 *substitute* the words "two rupees" for the words "one rupee."—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (e)*. [1-4-1932.]

(ii) In clause (b) in column 2 of Art. 25 *substitute* the words "two rupees" for the words "one rupee."—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (b)*. [1-4-1932.]

(iii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See Central Provinces Sch. IA, Art. 25.

**MADRAS** See Madras Sch. IA, Art. 21.

**ORISSA** See Orissa Sch. IA, Art. 25.

**PUNJAB** See Punjab Sch. IA, Art. 25.

#### SIND

(i) Same as that of Bombay (i) and (ii)—*Sind Act I of 1938*. [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments (Sind.)

**UNITED PROVINCES** See United Provinces Sch. IA, Art. 25.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 25.

### Reductions and Remissions.

For Reductions and Remissions under this article, see Appendix D.

**1. Scope of the article.**—This article provides for the stamp duty payable on counterparts and duplicates of instruments. The maximum duty imposed is Re. 1. The proviso to S. 6 also prescribes the maximum of one rupee for a counterpart or a duplicate so that even where a document amounts to a counterpart or duplicate and an instrument of some other description chargeable with a higher duty, it is only chargeable as a counterpart or duplicate.

According to Wharton's *Law Lexicon*,<sup>1</sup> a counterpart means the corresponding part or duplicate. When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original and the rest are counterparts.

There are two conditions for the applicability of this article. The first is that the counterpart or duplicate must be of an instrument which is liable to stamp duty. The second condition is that the stamp duty in respect of such instrument must have been paid.

In order to prove that the duty on the original instrument has been paid the production of the original in evidence may be avoided if the counterpart or duplicate bears the endorsement of the Collector under S. 16. Such an endorsement, however, is no conclusive evidence that the original instrument is duly stamped. (See Notes on S. 16.)

A *marupattam* is a counterpart of a lease executed by a tenant promising certain rent.<sup>1a</sup>

#### Article 25—NOTE 1

1. Wharton's *Law Lexicon*, 14th Edition page 269.

1a. (18) 5 AIR 1918 Mad 504 (505): 41 Mad 469: 42 Ind Cas 943 (FB), *Govindan Nambudri v. Otthathayil Moidin*. (It was

held in this case that the instrument must be both as a counterpart and as a mortgage. This view was not followed in a subsequent Full Bench case, AIR 1920 Mad 225: 43 Mad 365 (FB). See S. 2 (16), Note 31.) Also see S. 2 (16) Note 31.



Duplicates of engagements executed by abkari sub-renters and duplicates of shop-keepers' engagements are liable to stamp duty under this article.<sup>2</sup> A duplicate of a receipt must bear one anna stamp under cl. (a) of this article.<sup>3</sup> Counter-deeds relating to inam lands, sometimes executed by the purchaser in favour of the seller, the former agreeing to pay the assessment to the latter, should be stamped under this article.<sup>4</sup>

**2. Exemption.**—Article 35 exempts from stamp duty in some cases, a lease granted to a cultivator for the purposes of cultivation (including a lease of trees for the production of food and drink). Such a lease itself not being chargeable with any stamp duty, its counterpart also will not be chargeable with any duty under this article, the first condition for its applicability being that the counterpart must be of an instrument *liable to stamp duty*. Hence the exemption under this article, from stamp duty of a counterpart of a lease exempted under Art. 35 is redundant.

Under Art. 13 (c) of the Act of 1879, Sch. II, the counterpart of *any* lease granted to a cultivator was exempt from duty, whether the lease was chargeable with duty or not. Under the present Act, the counterpart is exempt only when the lease is exempt from duty.

As to the meaning of the term "cultivator," see Note 14 on Art. 35. A counterpart of a lease for salt pans is not exempt, as it is not a counterpart of a lease granted to a "cultivator<sup>1</sup>." But a person, whose occupation is that of a cultivator, and who obtains land on lease for planting cocoanut trees, has been held to be a "cultivator," and the exemption to this article has been held applicable to counterparts of such leases.<sup>2</sup>

**3. Description of stamp.**—See Appendix C.

### Provincial Amendment.

#### Article 25A

#### UNITED PROVINCES

*Note.*—In Schedule IA of the United Provinces, after Art. 25 a new Art. 25A is *inserted* relating to an instrument correcting a purely clerical error in an instrument. For the text of the said Art. 25A see United Provinces Sch. IA.

#### \*26. CUSTOMS BOND—

- |  |   |
|--|---|
| (a) where the amount does not exceed Rs. 1,000*; | The same duty as a Bond (No. 15) for such amount. |
| (b) in any other case. . . . .                   | Five rupees.                                      |

\* [1879—Art. 24 ; 1869—Sch. I, Art. 8.]

2. ('33) Mad S M, page 98. (Citing B P 809, 10th May 1891.)
3. ('33) Mad S M, page 35. (Citing B P 2504, 24th August 1883.)  
See Government of India Notification No. 2153, Finance and Commerce (SR), dated 20th July 1883.  
[See also ('33) Mad S M, page 98. (Citing B Ps 2504, 24th August 1883 : 211, 21st March 1889. If they are required for the administrative convenience of any department, the necessary stamps should be furnished by that department ; but where

they are required merely for purposes of record, certified copies of original receipts may be used instead of duplicate receipts.)]

4. ('33) Mad S M, page 106. (Citing B P 534, 13th December 1897.)

#### Article 25—NOTE 2

1. ('94) 18 Bom 546 (547) (FB), *Munjunath Mangeshaya Baindur v. M. S. Gokarnkar*.
2. ('33) Mad S M, page 98. (Citing B P 866, 29th June 1880.)
- ('91) 15 Bom 73 (76) (FB), *Ramchandra v. Babaji*.



## Provincial Amendments.

**BENGAL** See Bengal Sch. IA, Art. 26.**BIHAR** See Sch. IA, Art. 26.**BOMBAY**(i) In column 2 of clause (b) of Art. 26 *substitute* the words "ten rupees" for the words "five rupees."—*Bombay Act II of 1932, Pt. IV, S. 15 (5) (b).* [1-4-1932.]

(ii) See also Note given under Art. 1, Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See C. P. Sch. IA, Art. 26.**MADRAS** See Madras Sch. IA, Art. 22.**ORISSA** See Orissa Sch. IA, Art. 26.**PUNJAB** See Punjab Sch. IA, Art. 26.**SIND**(i) Same as that of Bombay (i).—*Sind Act I of 1938.* [31-3-1938.]

(ii) See also Note given under Art. 1, Provincial Amendments (Sind).

**UNITED PROVINCES** See U. P. Sch. IA, Art. 26.**WEST PUNJAB** See West Punjab Sch. IA, Art. 26

1. **Customs bond.**—The article relates to bonds executed by a person under S. 92 or S. 106 of the Sea Customs Act, (Act VIII of 1878) and Ss. 5 and 6 of the Inland Bonded Warehouses Act 1896 (Act VIII of 1896). (For text of these sections, see Appendix J.)

The duty payable on a customs bond executed under S. 92 of the Sea Customs Act is to be calculated on the amount mentioned in the bond and not on the customs duty chargeable on the goods concerned.<sup>1</sup>

It has been held by the Board of Revenue, Madras, that bonds executed by distillers in the Madras Presidency on the removal of spirits from distilleries without payment of duty should be treated (a) for export by sea as customs bonds and (b) for transport as security bonds and charged with stamp duty accordingly.<sup>2</sup>

2. **Description of stamp.**—See Appendix C.

<sup>a</sup> 27. **DEBENTURE** (whether a mortgage debenture or not), being a marketable security transferable—

(a) by endorsement or by a separate instrument of transfer ;

(b) by delivery .. .. .

The same duty as a Bond (No. 15) for the same amount.

The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.

*Explanation*—The term "Debenture" includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.

## Article 26—NOTE 1

1. ('33) Mad S M, page 98. (Citing B P 852-R., Mis., 12th July 1913.)

2. ('33) Mad S M, p. 98. (Citing B P 1114-R., Mis., 1st August 1907, 193-R., Mis., 14th August 1933.)



*Exemption.*

A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders ; provided that the debentures so issued are expressed to be issued in terms of the said Mortgage-deed.  
*See also Bond (No. 15), and section 8 and 55.*

- a. This article was *substituted* for the original article by S. 3 (iii) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

**Provincial Amendments.**

**BENGAL** See Bengal Sch. IA, Art. 27.

**BIHAR** See Bihar Sch. IA, Art. 27.

**BOMBAY**

(i) For the rate of stamp-duty payable under clause (b) of Art. 27 in the cities of Bombay, Ahmedabad, Poona and such other cities and urban areas, as the Provincial Government may, by notification in the Official Gazette, specify in this behalf and to which Part V of Bombay Act II of 1932 has been extended under SS 16 of that Act, see Part V of Bombay Act II of 1932, reproduced in Appendix A.

(ii) See also Note given under Art. 1 Provincial Amendments (Bombay).

**CENTRAL PROVINCES** See Central Provinces Sch. IA, Art. 27.

**MADRAS** See Madras Sch. IA, Art. 23.

**ORISSA** See Orissa Sch. IA, Art. 27.

**PUNJAB** See Punjab Sch. IA, Art. 27.

**UNITED PROVINCES** See United Provinces Sch. IA, Art. 27.

**WEST PUNJAB** See West Punjab Sch. IA, Art. 27.

**Synopsis**

1. Debenture.
2. Marketable security.
3. Explanation.
4. Exemption.

5. Debentures issued by local authorities  
See Notes on Section 8.
6. Renewal of debentures. See Notes on S. 55
7. Description of stamp. See Appendix C.

1. **Debenture.**—This article is new. Under the Act of 1879, there was no special provision for debentures. They were dealt with under the general article as to bonds.

The term “debenture” has not been defined by the Legislature.<sup>1</sup> It is a term which has not received any precise legal definition.<sup>2</sup> It is a flexible term and includes various kinds of instruments. For instance, there are mortgage debentures which are charges of some kind on property. There are debentures resembling bonds. There may also be debentures, which are nothing more than acknowledgments of indebtedness.<sup>3</sup> According to Wharton<sup>4</sup> a “debenture may be defined

**Article 27—NOTE 1**

1. ('27) 14 AIR 1927 Rang 37 (39) : 4 Rang 456 : 99 Ind Cas 315 (FB), *In re Rangoon Gymkhana Club*.
2. (1887) 36 Ch D 215 (218) : 56 L J Ch 815 : 57 L T 139 : 35 W R (Eng) 798, *Edmonds v. Blaina Furnaces Company*.
3. ('27) 14 AIR 1927 Rang 37 (39) : 4 Rang 456 : 99 Ind Cas 315 (FB). *In re Rangoon*

*Gymkhana Club*. (Debenture may be a document which either creates a debt or acknowledges it.)

[See (1881) 7 Q B D 165 (172, 173) : 50 L J Q B 517 : 44 L T 378 : 29 W R (Eng) 610, *British India Steam Navigation Co. v. Commissioners of Inland Revenue*.]

4. Wharton's *Law Lexicon*, 14th Edition page 302.